



Commissioners Present

Robert B. Weisenmiller, Chair  
Karen Douglas  
Carla J. Peterman

Staff Present

Michael Levy  
Rob Oglesby  
Jennifer Jennings  
Harriet Kallemeyn

	Agenda Item
Adam Gottlieb	
Kevin Barker	2
Christine Stora	3-5
Jeff Ogata	3-5
Kristen Driskell	6
Justin Regnier	8
Galen Lemei	9
Mike Gravely	10
Bill Pennington	10
David Chambers	11
Guido Franco	12
John Mathias	13 & 14
Andre Freeman	15
David Ashukian	

**Also Present**

Interested Parties (\*on phone)

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Scott Galati, Galati & Blek for Palen Solar Project, LLC	3-5
Lisa Belenky, Center for Biological Diversity	3
Tiffany North, Riverside County	3 & 5
Scott Busa, NextEra Energy	4 & 5
David Haddock, esq. for Erik Hoover & Patrick Davis	9
Jane Luckhardt, Downey-Brand	10
Mike Bachand, Pres., CalcERTS	

Public Comment

William Barrett  
Ralph Coleman  
John Flores, Valley Duct Testing  
George Nesbitt

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b. TRANSPORTATION POWER, INC. Possible approval of Amendment 1 to Contract 500-10-058 with Transportation Power, Inc. to update the contract terms and conditions and add a major subcontractor for this contract. There is no change in the funding amount or term of the agreement. (PIER electricity funding.)	
c. CLEAN POWER RESEARCH. Possible approval of Amendment 1 to Contract 500-10-059 with Clean Power Research to replace the current Disabled Veteran Business Enterprise (DVBE) (John Gildea, Sol Verde Engineering) with a new DVBE (Chris Bunas, Sunterra Solar). (PIER electricity funding.)	
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- c) Charles Vann. \$95,000 to determine the feasibility of designing a folded electromagnetic coil wind turbine generator that is more cost-effective than other wind turbine generators in terms of power-to-cost ratio. (PIER electricity funding.)
- d) Brian Moffat. \$95,000 to determine the feasibility of a novel "spindrift wave energy device" to generate electrical power from a wave-driven hydrokinetic turbine embedded in a submerged venturi tube. (PIER electricity funding.)
- e) San Diego State University. \$95,000 to determine the feasibility of developing a system to transfer protons to make superior catalysts for conversion of water to oxygen. This project is part of developing a system for converting water to hydrogen fuel (and oxygen) using sunlight. (PIER electricity funding.)
- f) University of California, Riverside. \$94,516 to determine the feasibility of developing a new, high efficient thermo-chemical process by combining steam hydrogasification reaction and water gas shift for producing substituted natural gas from wet organic wastes. (PIER natural gas funding.)
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P R O C E E D I N G S

JULY 11, 2011 10:06 a.m.

CHAIRMAN WEISENMILLER: Good morning. Let's start the Business Meeting with the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited in unison.)

CHAIRMAN WEISENMILLER: Good morning. Items 2 and 7 will be held. And I think the Executive Director has a starting event.

MR. OGELSBY: Okay. This is not on the Agenda but I'm very pleased to be able to provide this informational item.

The Energy Commission is kind of entering the 21<sup>st</sup> century and beginning to develop and expand its presence in social media. As kind of a first step into that we've developed, the Media Office has developed, in cooperation with other entities, a YouTube presentation that I think you're going to find interesting.

We plan to go live with a YouTube site to feature informational material as many state agencies have on July 19. And so for a little more description about the content and those that have worked on this Agenda Item I want to present our acting Media Officer

1 Director Adam Gottlieb.

2 MR. GOTTLIEB: Good morning, Commissioners.

3 Rob is right. We are expanding our social media  
4 platform and we are planning on launching the Energy  
5 Commission's YouTube channel on July 19, as has been  
6 stated.

7 We have been collaborating for this initial  
8 video with University of California - San Diego, the  
9 Rocky Mountain Institute and the United States Navy to  
10 create our very first, internally-produced video.

11 The Commission now joins more than 100 other  
12 state agencies with a YouTube presence. The brief  
13 five minute video will showcase the Commission's role  
14 in developing microgrids in California by partnering  
15 both with UC San Diego and the U.S. Navy.

16 Moving forward, we plan to create more  
17 additional content and original videos for our YouTube  
18 channel to inform the Commission and the general  
19 public about our role in creating a clean energy  
20 future for California and informing them about all of  
21 our other programs.

22 At this point, I would publically like to  
23 recognize and thank the staff involved in creation of  
24 the video. Specifically, Amanda Enneking, Kelly Kell,  
25 Michael Wilson. With a special thanks to Katie

1 Kukulka and Katie Chan from our Media and Public  
2 Communications Office. Additional thanks and  
3 recognition should be paid to Jamie Patterson, Mike  
4 Gravely and Fernando Pina from the RD&D Division as  
5 well as Kevin Barker and Grant Mack from your office,  
6 Chairman Weisenmiller for their dedicated efforts and  
7 coordination in making this video a reality. All of  
8 the links to our social media platforms can be found  
9 on our website at energy.ca.gov.

10 And, as they say in Hollywood, "Roll it."

11 (Whereupon YouTube CEC video is played.)

12 CHAIRMAN WEISENMILLER: Thanks, Adam.

13 Thanks to you and your team. Obviously this is the  
14 first time that I've seen that and I think that it's  
15 taken a lot of work. But people have made a lot of  
16 progress and we're looking forward to this being the  
17 first of many. So thanks again.

18 COMMISSIONER DOUGLAS: I just have to say,  
19 that was great. So thanks to everyone who took part  
20 in it. We'll all look forward to seeing many more  
21 come forward.

22 COMMISSIONER PETERMAN: Yeah. That was  
23 terrific. Chairman, I will say a star is born. I  
24 hope you don't leave us now for Hollywood now that  
25 you've had your taste on the camera. And, Adam, I

1 will say that James Earl Jones has a run for his  
2 money in terms of moderation in film. And so I  
3 thought that was terrific and, so, congratulations and  
4 to the whole team. Really professional. Really  
5 brought in all the different partners in this project.  
6 And, even for us, for me, who I get to hear about  
7 these projects in the Business Meetings, I learned a  
8 lot just having all that information in a concise  
9 manner. And so I think if you add a cat playing a  
10 piano then you're going to really rise in the YouTube  
11 rankings. So looking forward to more.

12 CHAIRMAN WEISENMILLER: Great. So let's go  
13 to the Consent Items.

14 COMMISSIONER DOUGLAS: Move the Consent  
15 Calendar.

16 COMMISSIONER PETERMAN: I'll second.

17 COMMISSIONER DOUGLAS: All those in favor?

18 (Ayes.) Consent Calendar passes  
19 unanimously.

20 As I said Item 2 has been held. Let's go to  
21 Item 3.

22 Item 3 is the Palen Solar Power Project.  
23 Possible approval of a petition to transfer ownership  
24 of the Palen Solar Power Project to Palen Solar I, LLC  
25 to – or from Palen Solar 1, LLC to Palen SEGS I, LLC.

1 Christine Stora?

2 MS. STORA: Yeah. Good morning. I'm  
3 Christine Stora and I'm the Compliance Project Manager  
4 for the Palen Solar Project. With me today is Jeff  
5 Ogata, Senior Staff Counsel.

6 The Palen Solar Project is a 500-megawatt  
7 solar thermal project that was certified on December  
8 15, 2010 and construction activities down at the site  
9 have not started. The project site is located  
10 approximately ½ mile north of U.S. Interstate 10,  
11 approximately 35 miles west of Blythe and  
12 approximately 10 east of Desert Center in an  
13 unincorporated area of eastern Riverside County.

14 On June 25, 2012, the California Energy  
15 Commission received a petition from Palen Solar I, LLC  
16 requesting approval to transfer the ownership of the  
17 Palen Solar Project from Palen Solar I, LLC to Palen  
18 Solar SEGS I, LLC, which is a wholly owned, indirect  
19 subsidiary of BrightSource Energy, Inc. pursuant to  
20 Title 20 of the California Codes of Regulations,  
21 Section 1769(b).

22 On April 2, 2012, the Palen Solar I, LLC  
23 filed voluntary petitions for relief under Chapter 11  
24 of the Bankruptcy Code. BrightSource Energy, LLC was  
25 selected as the highest bidder for the Palen Solar

1 project and, subject to satisfaction of closing  
2 conditions and approval of the Bankruptcy Court, Palen  
3 SEGS I, LLC will become the owner of the project.

4 A notice of receipt of mailed and docketed  
5 on June 27, 2012. On June 28 a comment was received  
6 for the Intervenor Center for Biological Diversity and  
7 I believe they are here to discuss those comments  
8 today.

9 In addition yesterday afternoon Riverside  
10 County also filed a comment joining the arguments and  
11 comments made by the Intervenor Center for Biological  
12 Diversity. Other than these two comments no other  
13 comments have been received.

14 At this time, after we hear the comments  
15 from the interveners, staff would recommend approval  
16 of this petition and request that the change in  
17 ownership be affected on the date that the sale  
18 closes.

19 CHAIRMAN WEISENMILLER: Great. Let's first  
20 start with the applicant. I understand that Scott  
21 Galati is on the phone?

22 MR. GALATI: Hi. This is Scott Galati. Can  
23 you hear me?

24 CHAIRMAN WEISENMILLER: Yes.

25 MR. GALATI: Hi. I apologize that I can't

1 be there with you at the Business Meeting but I am  
2 representing Solar Trust of America and Solar One. We  
3 received the comments as well from the interveners.  
4 We don't think that that should stop the Commission  
5 from approving the ownership transfer and would ask  
6 that you approve this petition.

7 CHAIRMAN WEISENMILLER: Okay. When would  
8 you expect to file an amendment, assuming we were to  
9 accept the Transfer of Ownership?

10 MR. GALATI: I think our plan is to file  
11 that as soon as we can, Commissioner. I don't have a  
12 good timeline for you on that. But I think we're  
13 working towards filing something this year.

14 CHAIRMAN WEISENMILLER: No other questions,  
15 then Lisa Belenky? Please.

16 MS. BELENKY: Good morning, Commissioners.  
17 I'm Lisa Belenky with the Center for Biological  
18 Diversity and you have our written statement. I think  
19 we still haven't heard any clarification about what is  
20 being transferred. We're quite concerned about the  
21 use of the idea that they are transferring the  
22 decision.

23 I don't see how the decision is something  
24 that they own. The decision is the decision of the  
25 Commission. There may be some confusion about that.

1 They do not have any site control. BLM never  
2 actually issued a decision on this and never issued  
3 any right of way grant. So we're - we would really  
4 like some clarification from the Commission as to what  
5 is actually being transferred here.

6 CHAIRMAN WEISENMILLER: Thank you.  
7 Riverside County.

8 MR. GALATI: Commissioner, this is Scott  
9 Galati. I can clarify this. If I could jump in I  
10 could clarify it very simply.

11 CHAIRMAN WEISENMILLER: Go ahead.

12 MR. GALATI: I used the term petition for  
13 ownership transfer of the final decision because there  
14 is no facility that is constructed. And the final  
15 decision acts as a permit, which is an authorization.  
16 And so rather than use the word permit or  
17 certification what I meant to do was to have the  
18 Commission approve, through amending the final  
19 decision, that the new owner of the facility, when  
20 built and the new owner of the permit, would be Palen  
21 Seg I.

22 We've used this language in similar  
23 projects. I think there's some confusion between  
24 assignments of property interest that BLM does versus  
25 the Energy Commission's permit. And so what I

1 intended to do was to make sure that the amendment  
2 wasn't transferring property, it was transferring the  
3 decision. That the amendment would say that the new  
4 owner, as identified in the final decision of the  
5 facility, and therefore the permit to build the  
6 facility, would be Palen Seg I.

7 MS. BELENKY: I'm sorry. That actually -  
8 this is Lisa Belenky again. That actually raises a  
9 little bit more confusion. If, as I don't know if the  
10 Commission would agree that the decision itself acts  
11 as the permit but if that is - and I would be  
12 interested to hear what the Commission would say.  
13 Then they're asking for an amendment that simply  
14 changes the name on this document. They're not asking  
15 for ownership of this document and, as they've said,  
16 they do not own - they don't have any property  
17 interest here and that they don't own the decision.  
18 They don't own any facility and they have no  
19 operations.

20 And they also - under their own filing have  
21 no present intent to build the facility that was  
22 permitted under this decision. So it appears that  
23 there's still a gap between what they're asking for  
24 and what they actually intend.

25 CHAIRMAN WEISENMILLER: Thank you. Let's

1 hear from Riverside and then I'll ask the staff to  
2 comment.

3 MS. NORTH: Good morning. Tiffany  
4 North, Deputy County Counsel, County of Riverside.

5 I just want to take a brief moment to join  
6 in on the Center for Biological Diversity's comments.  
7 We are concerned that they are seeking to transfer –  
8 the section that they're relying on talks about  
9 transferring ownership of the facility and there is no  
10 facility in this. And that it appears that they intend  
11 to transfer ownership of the decision to a new owner  
12 to construct an entirely different project than what  
13 was envisioned in the final decision.

14 Thank you.

15 CHAIRMAN WEISENMILLER: Thank you. Staff,  
16 do you have any comments?

17 MR. OGATA: Thank you, Chair Weisenmiller.  
18 This is Jeff Ogata. I'm Assistant Chief Counsel for  
19 Citing Advocacy.

20 This is an interesting question because we  
21 don't – we have a series of things that as a matter of  
22 practice we all consider to be one thing. We talk  
23 about certifications, we talk about the ability to  
24 instruct a facility, we talk about permits, licenses.  
25 The sort of real answer is the final decision is a

1 permit to allow the owner to construct a facility.

2 So we really view it as a permit that is owned by the  
3 applicant.

4           And so that's not stated that clearly in any  
5 of the statutes or the regulations but that's pretty  
6 much the practice of the Commission. We've always  
7 treated it that way. So, with respect to sort of the  
8 basic question I think that the Center for Biological  
9 Diversity is asking is that we have permitted  
10 transfers of ownership of the right to build the plant  
11 that's described in a final decision.

12           So even though, obviously, there is no  
13 facility now that's being transferred and there is no  
14 definition that really describes if a facility is real  
15 or being proposed. Sort of a more pragmatic reading  
16 of that is that and based upon if you look at some of  
17 the language in the statute of regulations, a facility  
18 is often in the context of these things, is  
19 combination an adjective. You know. Proposed to be  
20 constructed facility, an existing facility. So  
21 focusing on the word 'facility' all by itself really  
22 isn't all that helpful so we understand the confusion  
23 but the practice of the Commission has been to treat  
24 the final decision as a permit that can, in fact, be  
25 transferred to a different owner upon petition. So

1 hopefully that answers the question. It's sort of  
2 just the real effect of what we're trying to  
3 accomplish.

4 CHAIRMAN WEISENMILLER: Okay.

5 MR. LEVY: Yes. I'm Chief Counsel Michael  
6 Levy. I'll amplify that. Section 25500 of the Public  
7 Resources Code said the issuance of a certificate by  
8 the Commission shall be in lieu of any permit  
9 certificate or other similar document required by any  
10 other agency. The certificate is the entitlement to  
11 construct and operate. It is the legal entitlement.  
12 And nothing in Warren-Alquist or our regs require that  
13 the facility actually be physically be constructed  
14 before the certificate may be transferred.

15 What the regs talk about the change of  
16 ownership or operational control the requirements to  
17 do that don't include that the facility had to be  
18 constructed first. So you've got one entity that  
19 obtained the certificate has filed for bankruptcy and  
20 is selling the authorization. There's no authority  
21 anywhere that says it merely disappears because the  
22 entity that obtained it goes into bankruptcy. They  
23 can transfer it to a succor and earn interest.

24 CHAIRMAN WEISENMILLER: Presumably that  
25 applies to a lot of assets in bankruptcy. They can be

1 transferred – and in terms of our regulations what  
2 are the specifics – just for the record, the specific  
3 requirements we look at with this sort of transfer.

4 MR. LEVY: Certainly. Subdivision (b)1 of  
5 1769 of our regulations says that the petition shall  
6 contain the following information: a discussion of any  
7 significant changes in the operation or relationship  
8 between the owner and operator, the statement  
9 identifying the party responsible for compliance with  
10 the Commission's condition and certification. And a  
11 statement verified by the new owner or operator in the  
12 same manner as provided in section 1707. That the new  
13 owner or operator understands the conditions and  
14 certification and agrees to comply with those  
15 conditions.

16 Basically, the purpose of the procedure is  
17 to ensure that the new owner is subject to the  
18 jurisdiction of the Commission and is going to comply  
19 with the Commission set forth in the certificate.

20 CHAIRMAN WEISENMILLER: Thank you. And the  
21 staff has stated that, in fact, this application has –  
22 complies with those conditions?

23 MR. OGATA: This is Jeff Ogata for staff.  
24 We initially had looked at the petition and believed  
25 that it met all the requirements of the regulation.

1 After receiving the comments from Center for  
2 Biological Diversity we actually took a more careful  
3 look at what was included in the petition and the last  
4 statement by – in the petition that's signed by a Mr.  
5 Steven Willy indicates that the new owner agrees to  
6 comply with all conditions of certification as set  
7 forth in the final decision.

8 To be perfectly accurate the regulation  
9 requires that the new owner states that they  
10 understand the condition of certification and agrees  
11 to comply with those conditions.

12 So, technically, they didn't state that they  
13 understand the condition. They only stated that they  
14 agree to abide by the conditions so there may be an  
15 issue of whether or not the petition is 100% complete.  
16 I assume Mr. Galati is on the phone, if he can speak  
17 for his client he may be able to respond to that and  
18 confirm whether or not they understand the condition  
19 as well as agree to abide by it.

20 CHAIRMAN WEISENMILLER: Mr. Galati?

21 MR. GALATI: Yes. I can confirm that. And  
22 I believe that that is a drafting error on my part.  
23 If that's not included in the declaration it usually  
24 is. And if – BrightSource did do due diligence on  
25 this decision before they made a bid. So they

1 understood the conditions and when Mr. Wiley signed  
2 that declaration he agreed to be bound them after he  
3 understood it.

4 CHAIRMAN WEISENMILLER: Okay. And  
5 BrightSource has experience generally with the  
6 conditions in our permits?

7 MS. STORA: As far as I know, yes.

8 CHAIRMAN WEISENMILLER: I was asking Scott.

9 MS. STORA: Oh.

10 MR. GALATI: I apologize, Commissioner. I'm  
11 actually in Rome and I had a hard time hearing you.  
12 Could you say that one more time?

13 CHAIRMAN WEISENMILLER: Oh. You're in Rome?  
14 Okay.

15 [LAUGHTER]

16 CHAIRMAN WEISENMILLER: We thought you were  
17 held up like Lisa with some traffic accident but  
18 anyway. Anyway, the question is, I just wanted to get  
19 on the record that BrightSource does, in fact, have  
20 experience in dealing with our kind of conditions and  
21 our permits?

22 MR. GALATI: Yes, they do. They had one  
23 license from you for the Ivanpah Project and they're  
24 currently going through the licensing process for  
25 Hidden Hills and Rio Mesa. They're very familiar with

1 your conditions of what they mean and what they say.  
2 But more than that, Commissioner, they reviewed Palen  
3 and its license and understood it before they signed  
4 it – before Steven signed that declaration.

5 CHAIRMAN WEISENMILLER: And I guess before  
6 they even bid in the Bankruptcy Court, on the asset.

7 COMMISSIONER DOUGLAS: Commissioners, I  
8 wanted to say that, as I listen to this discussion, I  
9 think the Center raised a novel argument. It's  
10 different than the way we have applied transfers of  
11 ownership. We've done transfers of ownership of the  
12 licenses as a routine matter for many, many years and  
13 as the lead Commissioner for Citing I have brought  
14 many of these forward to you for your consideration.

15 I think that the staff's and the Chief  
16 Counsel's description of what we are doing here is  
17 excellent. The final decision is a permit to  
18 construct. As a permit to construct it is something  
19 that we have allowed to be transferred. It's actually  
20 not uncommon for an entity to go through the  
21 permitting process and ultimately sell the permit to  
22 construct to another entity that actually builds the  
23 project.

24 I think that this is a good policy because  
25 we don't want to be in a situation of going through

1 the permitting process for a project and getting to  
2 the end of the road. It would be a bad result if it  
3 turned out that we had a project that we approved and  
4 an entity that had come forward with it couldn't build  
5 it and the license just disappeared because we  
6 interpreted our regulations to not allow them to sell  
7 it to somebody who was actually prepared to go forward  
8 with the project. So I think that I'm interested to  
9 hear if either of you have other comments or  
10 questions. But I'm prepared to support this.

11           COMMISSIONER PETERMAN: I appreciated  
12 hearing the dialogue and Ms. Belenky's comments today.  
13 And thank you for the explanation, in particular Mr.  
14 Galati and Chief Counsel Levy. I have no additional  
15 questions.

16           CHAIRMAN WEISENMILLER: I was just going to  
17 make the observation that when you look at the  
18 renewable industry in terms of the - there are  
19 segments in the industry. There are some companies  
20 that really specialize in developing projects and  
21 there are other companies that really specialize in  
22 operating them. And often the operator really wants to  
23 do the construction.

24           Some companies are large enough they have  
25 both skillsets but, again, it's not unusual to have

1 this sort of transfer. And, in fact, from the public  
2 interest it is very good if you move the asset to a  
3 company whose skillset is better at that phase like  
4 the development or operation for construction. So  
5 it's a perfectly natural - I mean in this one the  
6 bankruptcy was obviously something that doesn't  
7 typically happen but typically transfers can or should  
8 happen.

9 COMMISSIONER PETERMAN: Just from a process  
10 perspective, I did want to confirm whether Mr.  
11 Galati's assertion that the client understands is  
12 sufficient to make this petition complete?

13 COMMISSIONER DOUGLAS: You know, I think we  
14 always have a choice about how formalistically to read  
15 our regulations. And so we have - the choice is  
16 before us to say that the word 'understand' is not in  
17 their petition. But we also have a choice to read our  
18 regulations pragmatically.

19 I think there's no question that  
20 BrightSource is a sophisticated company that has a lot  
21 of experience with us and they would not have bought  
22 this asset and signed this declaration if they had not  
23 reviewed and understood the process, the implications  
24 of our jurisdiction and the conditions that they be  
25 required to implement. So I think under the

1 circumstances I'm satisfied that we can deem this  
2 complete. I think it's very, very clear that they  
3 know what they are getting into when they deal with  
4 the Commission on a project like this.

5 COMMISSIONER PETERMAN: I think the part of  
6 the petition that notes that willingness to comply  
7 with the compliance conditions is the most important  
8 to have -

9 COMMISSIONER DOUGLAS: I agree. And that  
10 is, as staff - as Mr. Galati noted, that is the  
11 purpose of requiring that statement. Because we, as a  
12 Commission, need to be sure that a new owner is going  
13 to understand the Commission's jurisdiction and comply  
14 with our requirements.

15 So I will move Item 3.

16 COMMISSIONER PETERMAN: I'll second.

17 CHAIRMAN WEISENMILLER: All those in favor?

18 (Ayes.) This Item passes unanimously.

19 Thank you.

20 Let's go on to Item 4, which is the site  
21 Blyth Solar Power Project (09-AFC-6C). Possible  
22 approval of a petition to transfer the ownership of  
23 the Blythe Solar Power Project from Palo Verde Solar  
24 I, LLC to NextEra Blythe Energy Center, LLC. Christine  
25 Stora?

1 MS. STORA: Yes. Hi. On the Blythe Solar  
2 Project I'm representing Mary Dyas today, who's the  
3 Compliance Project Manager on this project who could  
4 not be here.

5 The Blythe Solar Project is a 1,000 MW  
6 project that was certified on September 15, 2010 and  
7 construction was initiated in November of 2010. The  
8 facility will be located approximately 8 miles west of  
9 the City of Blythe, 2 miles west - north, pardon me,  
10 of Interstate 10 and on land managed by the Bureau of  
11 Land Management in Riverside County, California.

12 On June 25, 2012, Palo Verde Solar I, LLC  
13 filed a petition requesting approval to transfer the  
14 operational control of the Blythe Solar Project to  
15 NextEra Blythe Solar Energy Center, LLC, a wholly  
16 owned subsidiary of NextEra Energy Resources, LLC  
17 pursuant to Title 20 of the California Code of  
18 Regulations, Section 1769(b).

19 On April 2, 2012, Palo Verde Solar I, LLC  
20 filed voluntary petitions for relief under Chapter 11  
21 of the Bankruptcy Code. NextEra was selected as the  
22 highest bidder for the Blythe Solar Project and  
23 subject to the satisfaction of closing conditions  
24 under approval of the Bankruptcy Court NextEra Blythe  
25 will become the owner of the project.

1           Palo Verde Solar I, LLC filed a petition to  
2 amend the project from solar thermal technology to  
3 photovoltaic technology on June 20, 2012. This  
4 petition will be handled separately from the ownership  
5 change and is currently under review by staff.

6           The Notice of Receipt for the ownership  
7 changed was mailed and docketed on June 27, 2012. No  
8 comments have been received for the ownership change.

9           At this time, staff recommends approval of  
10 this petition and request of the change in ownership  
11 be effective the date that the sale closes.

12           CHAIRMAN WEISENMILLER: Thank you.  
13 Applicant?

14           MR. BUSA: This is Scott Busa from NextEra  
15 Energy Resources – this is Scott Busa with NextEra  
16 Energy Resources and I’m here on behalf of the  
17 potential transferee, not the applicant, but Mr.  
18 Galati is going to speak for both sides of that, I  
19 believe.

20           CHAIRMAN WEISENMILLER: Thank you.

21           MR. GALATI: Scott Galati, representing  
22 Solar Trust of America and NextEra.

23           CHAIRMAN WEISENMILLER: Okay. Scott from  
24 Rome –

25           MR. GALATI: I’m sorry, Commissioner. I had

1 a delay.

2 CHAIRMAN WEISENMILLER: Why don't you speak  
3 from Rome to us?

4 MR. GALATI: Okay. I will. Thank you.  
5 Apologize again for interrupting the Commission  
6 meeting by being on the telephone.

7 But I would ask that you please approve this  
8 petition as well. You know NextEra. They have been  
9 in front of you before. They have projects that they  
10 have licensed, built and constructed in California.  
11 They're very sophisticated. They know the Commission  
12 process.

13 They — as you heard Ms. Stora say, they will  
14 be the owner as soon as it closes and this petition  
15 for ownership transfer is an important one for them  
16 and for Solar Trust of America, just like the last one  
17 as we did a resolution of that asset.

18 So we ask that you approve it.

19 CHAIRMAN WEISENMILLER: Thank you. Anyone  
20 in the room or on the phone who wants to speak on this  
21 topic?

22 COMMISSIONER DOUGLAS: All right. Hearing  
23 and seeing no additional comments on this topic, I'd  
24 like to thank you Mr. Busa, Mr. Galati for bringing  
25 this Item before us. I will move approval of Item 4.

1 COMMISSIONER PETERMAN: I'll second.

2 CHAIRMAN WEISENMILLER: All those in favor?

3 (Ayes.) This Item passes unanimously.

4 Thank you.

5 Let's go on to Item 5. Blythe Solar  
6 Project. (09-AFC-6). Possible assignment of a  
7 committee to oversee an amendment to the Blythe Solar  
8 Power Project (09-AFC-6).

9 MS. STORA: Yeah. Again, I'm representing  
10 Mary Dyas today, the Compliance Project Manager for  
11 this Project and this is Christine Stora.

12 The Palo Verde Solar I, the current owner of  
13 the Blythe Solar Project as mentioned earlier, filed a  
14 petition with the Commission on June 28 to convert the  
15 solar thermal project approved by the Commission to a  
16 photovoltaic – into a photovoltaic. Section 25500.1  
17 of the Public Resources Code allows certain solar  
18 thermal projects that are licensed by the Commission  
19 to use the Commission's Licensing Amendment Process to  
20 convert to photovoltaic technology.

21 Because of the size and complexity of this  
22 proposed amendment the Commission may wish to consider  
23 appointing a Siting Committee at this time to preside  
24 over the amendment process.

25 CHAIRMAN WEISENMILLER: Mr. Galati, do you

1 have any comment?

2 MR. GALATI: We have no objection to a  
3 Siting Committee presiding over the process. We would  
4 like to — what I think what we can do is if you are so  
5 inclined to appoint a Siting Committee we'd be more  
6 than happy going to that Siting Committee with a more  
7 detailed description of what the amendment is and what  
8 it will do.

9 Right now the Amendment is to take the  
10 footprint of the project, make some enhancements with  
11 respect to a transmission corridor, use some private  
12 land that would (inaudible) and that may change and  
13 use photovoltaic technology on that site.

14 As you know, the project already started  
15 construction and it concluded or at least they did  
16 some work in what is called the Phase 1A portion of  
17 the site and with the recent transfer we believe that  
18 the mitigation, habitat compensation requirements are  
19 resolved as well and that Phase I is fully mitigated.

20 CHAIRMAN WEISENMILLER: Thank you. Any  
21 comments from Riverside County or CBD?

22 MS. NORTH: Ah yes, Commissioner. Thank  
23 you, again. I'm Tiffany North, Deputy County Counsel,  
24 County of Riverside.

25 The County's concerned that the petition to

1 amend proposes to enlarge the project to include 320  
2 acres of privately owned land within the county's  
3 jurisdiction and to modify the transmission line and  
4 access road corridors. The newly added Public  
5 Resource Code Section 25500.1 applies in very limited  
6 circumstances. And while the petition to amend may  
7 satisfy the timing requirements of that section, an  
8 amendment to the certificate may not be sought for  
9 anything other than conversion itself. There's  
10 nothing in the Public Resources Code section that  
11 authorizes the solar power plant's owner to petition  
12 to the Energy Commission to review the amendment to  
13 seek to convert to PV technology while also increasing  
14 the project's footprint. And while also modifying  
15 transmission line and access road corridors.

16           There's nothing in the section that gives  
17 the Energy Commission jurisdiction to review and  
18 approve an amendment that seeks these additional  
19 changes. Section 25500.1 applies only to the  
20 conversion of the previously approved facility from  
21 solar thermal technology to PV technology. The  
22 permitting of a PV facility over the newly acquired  
23 320 acres should remain subject to the county's police  
24 power. And any additional proposed modifications to  
25 the transmission line or access road corridors located

1 on land subject to the County's jurisdiction or also  
2 within the County's land-use authority.

3 According to the petition to amend, these  
4 modifications are being made solely to accommodate  
5 surrounding projects and are unrelated to the  
6 conversion of the solar thermal facility to a PV  
7 facility.

8 The County respectfully raises these issues  
9 now and will raise them in further detail with the  
10 Committee, if a Committee is appointed today. Thank  
11 you.

12 CHAIRMAN WEISENMILLER: Thank you. Thank  
13 you. Today obviously we're dealing with only the  
14 question of whether or not to appoint a Committee and  
15 certainly that Committee can deal with issues such as  
16 those you have raised.

17 MS. NORTH: Thank you.

18 CHAIRMAN WEISENMILLER: So basically we are  
19 appointing a Committee and what we are doing is  
20 actually maintaining – the original Committee for the  
21 case Commissioner Douglas and myself. And going  
22 forward, original case, we will have Commissioner  
23 Douglas as the Presiding Member and myself as the  
24 second.

25 COMMISSIONER DOUGLAS: So I'll just say that

1 I think it makes a lot of sense because, of course,  
2 we became very familiar with the proposed project and  
3 the project site in the initial case. And so I think  
4 there was a lot of efficiency and a lot of sense of us  
5 being the Committee even though – obviously the  
6 project itself that will come in will be a different  
7 technology so there will be issues for us to learn as  
8 we go forward.

9 I will move approval of this Committee.

10 COMMISSIONER PETERMAN: I'll second.

11 CHAIRMAN WEISENMILLER: All those in favor?

12 (Ayes.) This passed unanimously. There's  
13 the Committee. Thank you.

14 MR. OGATA: Chair Weisenmiller, excuse me.  
15 This is Jeff Ogata. Just for the record we would like  
16 to note that the County of Riverside's comments were  
17 also filed in writing with us yesterday. So what Ms.  
18 North has stated was also given to us in writing so I  
19 just wanted to reflect that we did receive her  
20 comments.

21 CHAIRMAN WEISENMILLER: That's good. Let's  
22 go on to Item 6, which Alternative and Renewable Fuel  
23 and Vehicle Technology Program. Possible adoption of  
24 an order delegating authority to approve awards of  
25 \$75,000 or less as well as certain minor amendments to

1 agreements to the Executive Director, or his or her  
2 designee. Kristen Driskell, please.

3 MS. DRISKELL: Good morning. My name is  
4 Kristen Driskell. I'm from the Commission's Chief  
5 Counsel's Office. Today I'm presenting for your  
6 adoption an order to delegate to the Executive  
7 Director or his or her designee the authority to  
8 approve awards of \$75,000 or less in Energy Commission  
9 funds and amendments to agreements that do not  
10 increase the amount of the award, change the scope of  
11 the project or modify the purpose of the agreement.  
12 And this would only apply to agreements under the  
13 Alternative and Renewable Fuel and Vehicle Technology  
14 Program or what I'm going to call AB 118 for short.

15 As background the AB 118 program was  
16 established to provide funds to alternative fuels and  
17 advanced transportation projects that will reduce  
18 greenhouse gas emissions, reduce petroleum dependence  
19 and improve air quality.

20 AB 1314, which was enacted last year,  
21 amended Health and Safety Code Section 442729(b) to  
22 expressly give the Energy Commission authority to  
23 delegate small awards and minor amendments to the  
24 Executive Director.

25 The types of amendments that we contemplate

1 in this designation – delegation include non-  
2 controversial changes in the agreement, kind of like  
3 what we just approved on the Consent Calendar such as  
4 budget reallocations, no cost time extensions and  
5 changes in rates that do not increase the overall  
6 amount of the agreement or change the scope.

7           These are types of changes that are normally  
8 formal amendments and would have to come to a Business  
9 Meeting for your approval. However, amendments that  
10 are considered controversial or amendments that would  
11 add funds to the agreement, change the scope or modify  
12 the purpose of the project would still have to come to  
13 you for approval.

14           Delegating this authority to the Executive  
15 director would help streamline the process for our  
16 small agreements and minor amendments, which will in  
17 turn help awardees to stay on track to complete their  
18 projects and help California to achieve the greenhouse  
19 gas reduction and petroleum reduction benefits from  
20 those projects. Therefore, I recommend that the  
21 Energy Commission approve this Item.

22           CHAIRMAN WEISENMILLER: Thank you.  
23 Commissioners, questions or comments?

24           COMMISSIONER PETERMAN: I'll just comment.  
25 Thank you, Ms. Driskell for your explanation. It was

1 very beneficial and I'm supportive of this effort for  
2 the reasons that you stated in terms of increasing the  
3 efficiency of our process.

4 COMMISSIONER DOUGLAS: I also agree. I  
5 think that this will make things move more smoothly  
6 and it will increase our ability to act efficiently on  
7 some of these items. So I'm pleased to see it - I  
8 would be pleased to see it more broadly but  
9 nevertheless.

10 CHAIRMAN WEISENMILLER: Yeah. No. I was  
11 going to note that certainly as when we were dealing  
12 with Public Good Charge Reauthorization last year our  
13 common refrain was that our contracting process was  
14 very glacial in speed and anything we can do to  
15 improve the timing while maintaining the effectiveness  
16 and efficiency of our contracting will go a long way  
17 to helping this organization be more effective.

18 COMMISSIONER DOUGLAS: I hope our Executive  
19 Director will tell us that glacial is no longer the  
20 adjective to use. And I hope that this will help us  
21 in moving in that faster direction. You want to make  
22 a motion, Commissioner Peterman?

23 COMMISSIONER PETERMAN: Sure, Commissioner  
24 Douglas. I will move Item 6.

25 COMMISSIONER DOUGLAS: Second.

1 CHAIRMAN WEISENMILLER: All those in favor?

2 (Ayes.) This Item passed unanimously.

3 Let's - as I said item 7 has been held.

4 Let's go on to 8. Nonresidential Building Energy Use  
5 Disclosure Program. Possible adoption of proposed  
6 regulations for the Nonresidential Building Energy Use  
7 Disclosure Program. Justin Regnier.

8 MR. REGNIER: Good morning, Chairman,  
9 Commissioners and Advisors. Good morning as well to  
10 all of our attendees, both in person and up on the  
11 phone.

12 My name is Justin Regnier. I've been  
13 serving as Project Manager for the Rulemaking Process  
14 for the past year or so. I'm happy to be here today  
15 to urge the adoption of the 15 day regulations  
16 implementing AB 1103.

17 To my right are Robin Mayer and Martha Brook  
18 who are Staff Counsel and Senior Mechanical Engineer,  
19 respectively.

20 Today we'll be going through the background  
21 on these regulations, focusing on the need that they  
22 are addressing and the findings supporting their  
23 development. We'll also detail the process leading up  
24 to rulemaking and discuss a timeline of these  
25 activities and the proposed implementation of the

1 regulations.

2           We've printed out a limited number of copies  
3 of the final regulations and they are up on the web  
4 for those of you who are attending remotely. Today  
5 we will not be going through the regulations section  
6 by section but we do welcome your questions at the end  
7 of the presentation and staff is recommending adoption  
8 of these regulations today.

9           AB 1103, advanced by Assemblymember Lori  
10 Saldana in 2007, was the first statute in the nation  
11 to mandate the benchmarking of nonresidential  
12 buildings. It served as a template for many of the  
13 subsequent efforts in other places. Since its passage  
14 we've seen similar laws enacted in cities all over the  
15 country as well as in the State of Washington.

16           As I'm sure that everyone in this room  
17 knows, getting regulations crafted that take into  
18 account the needs of all the stakeholders in a state  
19 as large and diverse as California is to say the least  
20 an involved process.

21           As a result, AB 531 was passed in 2009 in  
22 order to give the CEC the authority and flexibility  
23 necessary to set the schedule for implementation.

24           In consultation with stakeholders we have  
25 come up with a phase schedule for implementations that

1 we hope will allow the market to adjust for these new  
2 regulations.

3           What this program does and why we're here  
4 today is to allow anybody that's entering into a  
5 transaction that involves an entire nonresidential  
6 building to be able to have the right to see how much  
7 energy that building is using.

8           The means by which this energy use is  
9 documented and communicated is the ENERGY STAR  
10 Portfolio Management System. In order for this  
11 disclosure to be useful it is a requirement that this  
12 disclosure be given to the counterparty as soon as is  
13 practicable but no later than the presentation of the  
14 contract.

15           This disclosure is strictly between the  
16 counterparties in a financial transaction. It only  
17 occurs when the entire nonresidential building is  
18 sold, leased or financed. There is several elements  
19 to disclosure, which are detailed on the slide. The  
20 electronic submission to the CEC allows us to  
21 understand compliant rates.

22           The standard reports from ENERGY STAR give a  
23 consistent basis to the disclosure and the summary  
24 sheet informs the parties of the significance of all  
25 of these documents. More detail on what exactly these

1 documents are is given in the definitions section of  
2 the regulations.

3           As we will show later in this presentation  
4 we've made every effort to streamline the disclosure  
5 process. We feel that the minimum effort required by  
6 this process is more than balanced by the benefits  
7 that the disclosure provides.

8           What we have here is a picture of the San  
9 Francisco skyline. There are a number of large  
10 buildings in the forefront. If you were interested  
11 today in putting down a few hundred million dollars on  
12 one of these buildings you would not have the right to  
13 understand how much energy that building uses, or  
14 conversely how much energy that building is wasting.

15           The reason that this matters is because  
16 energy represents up to 30 percent of the total costs  
17 of the operation of an office building and represents  
18 a far larger proportion of those controllable costs as  
19 failing to pay the property taxes is generally not an  
20 option for building owners. In a difficult market  
21 where raising rents is not an option, controlling  
22 expenses can be the different between holding onto the  
23 building and making it through these economic times;  
24 and losing the building to the bank.

25           What, in essence, this regulation

1 accomplishes is that those people who are staking all  
2 or part of their livelihood have the right to  
3 understand what energy use that building is  
4 encountering. The energy guides that are shown on this  
5 image are only meant to illustrate the concept of  
6 being able to see the energy use before making the  
7 investment. This is not, obviously, the format that  
8 is going to be disclosed, as obvious as that would be.

9 [LAUGHTER]

10 MR. REGNIER: In general, you wouldn't buy a  
11 car if you didn't know what mileage you could expect  
12 from it in its standard operation. There is no reason  
13 why we should be asking people who are putting down a  
14 lot more money to make that sort of decision without  
15 access to that same sort of information.

16 There have been a number of research  
17 projects to analyze whether the effort spending and  
18 achieving - excuse me. The effort spent in achieving  
19 energy efficiency is a good investment. The effort  
20 that is usually signified in these research projects  
21 is the achievement of the EPA's ENERGY STAR  
22 certification, which denotes that these buildings are  
23 in the top quartile of buildings in the nation.

24 These projects over the past few years were  
25 conducted by different researchers and different

1 institutions but the things that they have in common  
2 are that they looked at large samples of  
3 nonresidential buildings. They looked at the values  
4 across comparable buildings, when they're controlled  
5 for the building size, the age, the amenities and all  
6 the other things that you would expect would go into a  
7 building valuation.

8           And the last thing that they have in common  
9 is that they all came to the same result. All of  
10 these studies conclude that ENERGY STAR labeling  
11 increases nonresidential building values; that is a  
12 good deal for the owner.

13           This slide is meant to be illustrative. It  
14 shows the results of the studies that we talked about  
15 in the last slide in the areas of the rental price,  
16 the sales price and the occupancy rate. You can see  
17 that the magnitude varies by the study but the  
18 takeaway is the same in all cases, which is what we  
19 just alluded to - that it makes people money.

20           One of the other things that was found in  
21 this downturn is that the effect on occupancy rates  
22 was particularly pronounced. It made a difference in  
23 many cases, whether a building could hold on to their  
24 tenants and hold onto their revenue.

25           So at the time that AB 1103 was passed

1 legislature made two findings. These are them,  
2 straight out of the statute. The first finding  
3 relates to what we were just talking about. The  
4 second finding is a could statement. It could  
5 motivate building operators.

6           While it would seem logical that  
7 understanding a problem would spur you to fix it, the  
8 data just wasn't there at the time to support a  
9 stronger statement. There was no research showing  
10 that information on building energy use would  
11 translate to an increase in building value. What the  
12 legislature did note, however is that energy  
13 efficiency is the most cost effective way of  
14 displacing fossil fuel consumption and that it was not  
15 being deployed to its full potential.

16           There have been many studies over the years  
17 that come to the conclusion that building owners need  
18 to have a solid business case for embarking on energy  
19 efficiency projects.

20           It is the goal of this regulation that they  
21 will now have the information upon which to build that  
22 business case.

23           In the course of developing regulations for  
24 AB 1103 the Commissioner's focus has been to cast the  
25 widest net possible and to try to hear from all

1 parties that are potentially affected. This is a  
2 brief overview of the outreach efforts that's been  
3 going on since 2007. There are many, many more  
4 details. We'd be happy to provide them, if requested.

5 But the takeaway is that we've really made  
6 an active effort to hear from everybody in putting  
7 this regulation together. We've put out multiple  
8 emails, phone calls and have been wide open to any  
9 comment that people may have. And what has come out  
10 of this I'd like to detail briefly for you in the next  
11 5 slides.

12 To start with, let's take a look at the  
13 elements of disclosure. There are 5 parties that have  
14 a role in this process. The owner, who is at the  
15 center. At the top is the ENERGY STAR Portfolio  
16 manager. At the left is the utility or energy  
17 provider. On the right is the CEC website and at the  
18 bottom is the contractual counterparty who is the  
19 buyer, the leasee or the lender of the entire  
20 building.

21 The first step in the process is for the  
22 building owner to enter their building data into the  
23 ENERGY STAR Portfolio Manager and use the ENERGY STAR  
24 Portfolio Manager to request energy usage data from  
25 the utilities and energy providers.

1           The second step is for the energy use data  
2 to be uploaded to the ENERGY STAR Portfolio Manager by  
3 the utility or the energy provider. There are a  
4 number of feasible options for doing this and we don't  
5 anticipate that there will be any issues with any of  
6 the utilities or energy providers being able to  
7 accomplish this step.

8           The third step is for the owner to go to the  
9 CEC website in order to download the disclosure  
10 summary sheet and access the custom reporting link  
11 that takes them to the right place within the ENERGY  
12 STAR Portfolio Manager.

13           The fourth step happens once the owner  
14 accesses the custom report link. They are taken to  
15 the portion of the ENERGY STAR Portfolio Manager where  
16 they can submit compliance data and download the  
17 standard reports that we outlined in the earlier  
18 slide.

19           And, of course, the fifth and final step is  
20 the disclosure of the required documentation to the  
21 counterparty. This disclosure cannot occur any later  
22 than the presentation of the contract for the  
23 transaction at hand. But we are asking that it be  
24 done as soon as is practicable so give the  
25 counterparty time to consider value of the

1 information.

2           The disclosure of these documents, we feel,  
3 will help people in the nonresidential real estate  
4 market have better information and ultimately lead to  
5 clearer decisions on their transactions.

6           This slide shows the timeline of our  
7 activities; past, present and future. As mentioned  
8 before we've endeavored to engage with stakeholders  
9 prior to the rulemaking process and have addressed all  
10 of the comments that we have received in rulemaking.  
11 The shaded sections at the bottom of the slide speak  
12 to the phased implementation schedule proposed for the  
13 regulations. You can see that the implementation date  
14 for disclosure varies by building gross square footage  
15 with a new group added every six months until we have  
16 all buildings greater than 5,000 square feet covered.

17           The staging of this requirement has been  
18 proposed in order to allow the marketplace to adjust  
19 to the new requirement.

20           And at this point we'd be happy to take any  
21 questions.

22           CHAIRMAN WEISENMILLER: Thank you very much.  
23 Commissioners, questions or comments?

24           COMMISSIONER PETERMAN: Thank you for that  
25 presentation. A couple questions. Do you happen to

1 know what's the share of buildings that's over 50,000  
2 and over the next metric and over 5,000?

3 MR. REGNIER: The data is pretty hard to  
4 chase down. We don't have a full California building  
5 survey. We have rough estimates and we can provide  
6 those if you like.

7 COMMISSIONER PETERMAN: Okay. Thank you.  
8 I'd be interested in that. And just to clarify, the  
9 information that is disclosed, would that eventually  
10 be publically available or only to the counterparty of  
11 the building?

12 MR. REGNIER: It will not be publically  
13 available. It will only be available to the  
14 counterparty and it's specifically noted in the  
15 regulations that it will not be used for any other  
16 purpose than for meeting the provisions of this  
17 regulation.

18 COMMISSIONER PETERMAN: Thank you.

19 COMMISSIONER DOUGLAS: I just have a couple  
20 brief comments. First of all, I'd like to thank  
21 staff. This was a fairly big effort undertaken at a  
22 time in which we were working on a number of very  
23 important things - the Title 25 building standards  
24 being first and foremost in my mind but many other  
25 things as well.

1           And, as you might have heard from Justin's  
2 presentation, there's a lot of detail that goes into  
3 getting something like this right. One reason why  
4 this data is less useful in a public sense is that  
5 commercial buildings are not all used in the same way;  
6 it's a tremendously obvious statement. But that means  
7 that two buildings that look similar might have very  
8 different scores because of what's actually going on  
9 in the building. That's the sort of thing that can be  
10 discussed in a sophisticated way with a counter party  
11 that might wonder why the energy use is a bit higher  
12 and might learn that actually there's a data center or  
13 a manufacturing activity that is using a lot of energy  
14 and processes that are going on within the building.  
15 And, in fact, that building might have comparable  
16 efficiency to another building that scores better.  
17 And so that's one reason why this is not so much a  
18 tool for publically scoring or grading a building.  
19 That kind of tool would have to be even more refined  
20 because it would have to really compare apples to  
21 apples in a more sophisticated way than is envisioned  
22 here. What's really envisioned here it giving – is  
23 providing a tool that informs a business transaction  
24 in the commercial real estate market.

25           So it's a – I want to thank – I don't know

1 if – do we have cards on this Item – I’m almost  
2 surprised we don’t have cards on this Item because the  
3 utilities were deeply involved in working on this with  
4 us and, of course, one of the issues with the  
5 utilities is providing ways for them to partner in  
6 proving this information while maintain the  
7 confidentiality obligations that utilities have to  
8 their customers. And some buildings have multiple  
9 tenants and so there were issues there that staff had  
10 to work through so I wanted to express appreciation to  
11 utilities for working through those issues with us.

12           And, I’ll also say, that while I’m surprised  
13 that we – I’m somewhat surprised we don’t have a line  
14 of people here. I think it’s a good thing in the end  
15 because I think it means we have not offended anybody  
16 too much and, in fact, people might actually view the  
17 tool as a useful – as actually useful in this market.

18           But I will say that this is also something  
19 that has gotten some attention in the commercial real  
20 estate market. Maybe not a tremendous amount of  
21 attention but I have, from time to time, even in one  
22 Siting case that I remember, in the City Hall of  
23 Blythe, California been engaged in conversation with  
24 somebody who wanted to talk about this set of proposed  
25 regulations. So this is a far reaching effort. And

1 it's going to take a lot of work on our part to hear  
2 from the effected community as these requirements come  
3 into effect and adjust as needed and really realize  
4 the promise of this being an actually useful tool for  
5 informing parties in these transactions.

6 CHAIRMAN WEISENMILLER: I would note that I  
7 did have the opportunity to speak to BOMA early on in  
8 this process and certainly heard a lot of feedback on  
9 some of the potential ideas here. I'm glad people  
10 listened or at least we can tell them that we  
11 listened.

12 I would also note that one of the things  
13 that came out of the Good Rise Conference down in San  
14 Diego that SDG&E that put together was an area that's  
15 really more and more emerging and was actually on the  
16 dais with a Cabinet Officer from Toronto and just the  
17 notion that privacy for customer data. And that  
18 basically the strong message from them and SDG&E  
19 adopted a policy on it is that in this day and age is  
20 customer's own their building data. It's not  
21 something owned by the utility. It's not something  
22 that can be shared with people without the customer's  
23 consent. So certainly as we go forward on Smart Grid  
24 and SmartMeters one issue that keeps coming up more  
25 and more is that fundamental question of ownership and

1 privacy.

2           COMMISSIONER PETERMAN: Thank you for those  
3 comments, both Commissioner Douglas and Chairman  
4 Weisenmiller. I think this is a very worthwhile,  
5 positive action. I think we seek any opportunity that  
6 we can to quantify and therefore allow consideration  
7 of energy waste and use and financial transactions.  
8 So I appreciate what a heavy lift this has been and I  
9 appreciate the time that you've taken with it,  
10 Commissioner Douglas and previous Commissioners who  
11 have worked on this to make sure that this regulation  
12 meets the intent as well as respects the privacy and  
13 some of the concerns raised. And I look forward to  
14 the expansion to the residential market; albeit, I'm  
15 sure more challenging as it's harder to find those  
16 apples to apples comparisons. And, ultimately, this  
17 has tremendous private and public benefit. So I'm  
18 very supportive.

19           COMMISSIONER DOUGLAS: Well, thank you,  
20 Commissioner Peterman. I'll move approval - I'm sorry  
21 what Item are we on? Of Item 6?

22           CHAIRMAN WEISENMILLER: Eight.

23           COMMISSIONER DOUGLAS: Eight? I'll move  
24 approval of Item 8.

25           COMMISSIONER PETERMAN: I'll second.

1 CHAIRMAN WEISENMILLER: All those in favor?

2 (Ayes.) Item 8 passed unanimously.

3 MR. REGNIER: Thank you, Commissioner.

4 CHAIRMAN WEISENMILLER: Item 9. Complaint  
5 against and request for investigation of CalCERTS,  
6 Inc. (12-CAI-01). Possible adoption of the assigned  
7 committee's proposed decision. Contact is Galen  
8 Lemei. And I believe Commissioner Douglas has a  
9 statement.

10 COMMISSIONER DOUGLAS: I do. Before we take  
11 up this Item I do want to discuss a – acknowledge a  
12 procedural issue for the record. Last week, before  
13 the – last week, right after the proposed decision was  
14 posted Commissioners received an email or two emails  
15 attaching materials related to the proposed decision.  
16 These materials were sent by a stakeholder who wished  
17 to remain anonymous and wished that his correspondence  
18 be kept confidential. The stakeholder was unaware of  
19 ex parte restrictions on communications with decision  
20 makers in adjudicative matters.

21 Recognizing this as a potential ex parte  
22 communication I did not read these materials. I  
23 understand that my fellow Commissioners also did not  
24 read these materials. We forwarded these materials to  
25 Counsel for their advice and after determining that an

1 ex parte communication had been successfully averted,  
2 our Counsel determined that we could return the  
3 correspondence to the individual in question.

4 Counsel for both parties of this matter were  
5 informed of this and agreed to this course of action.  
6 This course of action being returning and not reading  
7 the prohibited communication. So I just wanted to get  
8 that on the record before we began this Item.

9 Thank you.

10 CHAIRMAN WEISENMILLER: Yeah. Again for the  
11 record, I certainly did not read the material. I  
12 forwarded it to Chief Counsel. I returned it but I  
13 haven't done anything with it.

14 COMMISSIONER DOUGLAS: What I really did was  
15 delete it.

16 CHAIRMAN WEISENMILLER: Okay. That's what I  
17 had planned on doing, actually.

18 COMMISSIONER DOUGLAS: Okay.

19 COMMISSIONER PETERMAN: Yeah. I deleted it.  
20 I don't like to read any emails I don't have to

21 [LAUGHTER]

22 COMMISSIONER PETERMAN: So I just passed it  
23 by immediately.

24 MR. LEVY: For the record and for all of our  
25 public who's listening benefit, if we have a docket

1 open the proper way to communicate to the  
2 Commissioners is through the docket. File a docket,  
3 docket your comments or your arguments or whatever it  
4 is that you want them to see and then everybody gets  
5 to see it equally, which is why we have the docket  
6 system.

7 MS. LEMEI: That's also good because  
8 Commissioners actually read materials when they're  
9 docketed whereas they don't always read there, you  
10 know, depending. So as an Advisor I can certainly  
11 speak to that as a more effective way to ensure,  
12 sometimes, communications are successfully discussed.

13 Good morning, Chair Weisenmiller,  
14 Commissioner Douglas, Commissioner Peterman. My name  
15 is Galen Lemei. I'm Advisor to Commissioner Karen  
16 Douglas, Presiding Member of the Committee to which  
17 this matter was delegated.

18 Mr. Hoover and Mr. Davis brought an against  
19 CalCERTS alleging it violated regulatory provisions of  
20 the Energy Commission's Home Energy Rating System  
21 Program, affectionately known as HERS, as well as  
22 constitutional requirements of procedural due process  
23 when it de-certified Mr. Hoover and Mr. Davis as  
24 raters eligible to conduct residential home energy  
25 ratings under the HERS Program.

1           Mr. Hoover and Mr. Davis sought 3 remedies.  
2 First, reversal of the decertifications. Two, an  
3 investigation of CalCERTS disciplinary process for  
4 handling rater mistakes and three, requirements that  
5 CalCERTS adopt a written rater discipline procedure  
6 that complies with HERS Program regulations as well as  
7 constitutional due process requirements.

8           The Commission assigned the matter to be  
9 adjudicated by a Committee consisting of Commissioner  
10 Douglas as Presiding Member and Commissioner  
11 McAllister as Associate Member. The Committee  
12 conducted a hearing on the matter on May 11, 2012.

13           In this proposed decision the Committee  
14 finds that CalCERTS decertification of Hoover and  
15 Davis was not inconsistent with the HERS regulations.  
16 The HERS regulations make providers responsible for  
17 oversight of raters and afford broad flexibility in  
18 responding to complaints. Further, Mr. Hoover and Mr.  
19 Davis agreed to the contractual terms that allowed  
20 CalCERTS to decertify them if it found their conduct  
21 to show a pattern of failure to provide true and  
22 accurate and complete ratings, whether willful or not.

23           On the constitutional questions, the  
24 Committee found that CalCERTS is not a state actor and  
25 therefore not subject to due process limitations.

1 Further, the evidence shows that before it  
2 decertified Mr. Hoover and Mr. Davis it provided each  
3 of them with notice of its concerns, opportunity to  
4 question CalCERTS about those concerns, an opportunity  
5 to explain their conduct and provide supporting  
6 documents, and an opportunity to ask questions and  
7 present additional explanations and documents after  
8 meeting with CalCERTS personnel.

9           However, the hearing also revealed an  
10 unrefined and informal and seemingly improvised  
11 discipline and decertification process, which lacked  
12 features such as public, written procedures, published  
13 written procedures and consistent notice requirements.  
14 These deficiencies as well as more general matters  
15 involving provider/rater relations warrant broader  
16 Commission inquiry.

17           The proposed decision therefore states an  
18 intent to explore these matters, pursuant to a  
19 Commission order instituting investigation or a  
20 similar proceeding that creates a forum for  
21 participation by all stakeholders and interested  
22 persons. It would be through such proceeding, if at  
23 all, that the Commission might impose a requirement  
24 for providers to adopt written procures governing  
25 aspects of the provider/rater relations.

1           The proposed decision therefore dismisses  
2 the complaint against Mr. Hoover and Mr. Davis with  
3 prejudice. The Committee recommends that the  
4 Commission adopt its proposed decision with one slight  
5 change to the proposed adoption order.

6           Specifically, the adoption order Item 3 -  
7 the Committee recommends that this be amended to read  
8 "Three. We order the docket file for this proceeding  
9 be closed on the effective date of the decision."  
10 With the remainder of that sentence deleted. This is  
11 because the Energy Commission regulations don't  
12 provide for reconsideration for this type of  
13 proceeding that is unique to the Citing process so  
14 that was included in the proposed adoption order in  
15 error.

16           Thank you.

17           CHAIRMAN WEISENMILLER: Thank you. Let's go  
18 through the parties to this proceeding.

19           MR. HADDOCK: Good morning. My name is  
20 David Haddock. I'm appearing on behalf of the  
21 complainants, Eric Hoover and Patrick Davis.

22           Mr. Hoover and Mr. Davis made their livings  
23 as HERS raters, certified raters, until CalCERTS  
24 suspended their right to work without prior notice and  
25 then decertified them without providing them with a

1 meaningful opportunity to defend themselves.

2           Mr. Hoover and Mr. Davis believe they are  
3 entitled to due process, meaning they should actually  
4 be told what they are accused of before their right to  
5 work is interfered with. They should be provided with  
6 enough detail so that they can adequately defend  
7 themselves.

8           The decision about their right to work  
9 should be based upon evidence and be on the record so  
10 that it can be reviewed impartially. There are many  
11 safeguards beyond this. Like all government agencies,  
12 the Energy Commission provides these protections  
13 routinely; although it is a private company and not a  
14 government agency, complainants argue that CalCERTS is  
15 so entwined with government that it should also be  
16 required to provide due process.

17           The Committee's proposed decision rejects  
18 this argument for primarily one reason. The Committee  
19 concludes that CalCERTS decisions to certify and  
20 decertify HERS raters are made in the sole discussion  
21 of CalCERTS, independent of any influence, direction  
22 or complicity with the State of California.

23           Although the complainants post-hearing brief  
24 address several problems with this, some of the most  
25 fundamental problems were not addressed in the

1 proposed decision. The most important of these is  
2 that the statute that created and authorizes the HERS  
3 Program expressly requires the Energy Commission to  
4 participate in the certification process.

5           Public Resources Code Section 25942 says  
6 expressly that rater's certification must be performed  
7 "by the Commission." Yet the proposed decision claims  
8 that the Energy Commission has no role to play in  
9 raters' certification. Both of these things cannot be  
10 true. Before the proposed decision becomes a final  
11 decision the Energy Commission should address this  
12 problem. Because the statute requires the Commission  
13 to participate due process must apply.

14           The second point that I wanted to make is  
15 that the law does not allow a private company like  
16 CalCERTS to make policy decisions for the HERS  
17 Program. The Court of Appeal has said that powers  
18 which regulate the exercise of judgment and discretion  
19 must necessarily remain with the public agency and  
20 cannot be delegated.

21           Here's what that means in this case. If the  
22 Energy Commission decides in advance what factors  
23 should be considered when certifying and decertifying  
24 HERS raters, you can ask private companies like  
25 CalCERTS to follow through and apply those factors on

1 a day-to-day basis. What the Energy Commission  
2 cannot do is delegate the whole job and ask CalCERTS  
3 to decide for itself what factors should be  
4 considered.

5 But that is what CalCERTS has done in this  
6 case. The proposed decision makes clear that the  
7 Energy Commission allows CalCERTS to decertify HERS  
8 raters for, essentially, any reason it chooses. The  
9 law doesn't allow a private company to have this much  
10 discretion over public policy.

11 A public agency may only delegate  
12 administrative functions and only so long as it  
13 retains ultimate control over administration so that  
14 it may safeguard the public interest. And, again, if  
15 the Energy Commission retains ultimate control due  
16 process must apply.

17 We believe these issues are fundamental to  
18 this case. They were briefed by the complainants but  
19 the proposed decision doesn't address them. And we  
20 feel the final decision should address them.

21 Mr. Hoover and Mr. Davis asked only for what  
22 every person would want when faced with having their  
23 livelihoods taken away. They asked for fair  
24 procedures that allow them to defend themselves.  
25 Hundreds of men and women have committed their

1 livelihoods to this good program. Our hope is that  
2 the Energy Commission would be mindful of that  
3 commitment when making its final decision. For these  
4 reasons and for the other reasons that are laid out in  
5 our post-hearing brief, complainants oppose the  
6 proposed decision as written. Thank you.

7 CHAIRMAN WEISENMILLER: Thank you. Other  
8 parties?

9 MS. LUCKHARDT: Good morning, Commissioners.  
10 This is Jane Luckhardt on behalf of CalcERTS.

11 I guess I'll begin by referring to the  
12 comments made by Mr. Haddock. I would like to state  
13 that the comments made by Mr. Haddock were presented  
14 to the Committee and the Committee has evaluated them  
15 through a hearing, listened to hours of evidence and  
16 has made a real reasoned decision.

17 I would also like to point out that although  
18 Mr. Haddock likes to term this debate in the form of  
19 constitutional due process arguments that this matter  
20 revolves around whether two raters were doing their  
21 job. Whether they went into houses and actually  
22 conducted the ratings that they were asked to perform  
23 or whether they didn't perform their ratings.

24 The evidence clearly showed that it was  
25 impossible for these raters to have actually done what

1 they said they had did and reported in the program.  
2 Therefore, this is not some nice argument about  
3 constitutional due process. This is about whether  
4 individual raters did their job.

5 No process is perfect and we are not here to  
6 say that CalCERTS' process was absolutely perfect and  
7 could not be improved. We understand the comments  
8 that Mr. Lemei made earlier and that are included in  
9 the decision about how they would prefer – about how  
10 this Commission would prefer to have the process be  
11 more transparent and more clear.

12 CalCERTS is working on that and will file  
13 additional documents with the Commission as part of  
14 its provider process before the end of the year.

15 But we're not here today to debate what they  
16 might improve. We're here today to decide whether  
17 they acted correctly in the matter of these two  
18 individuals. And as far as these two individuals go,  
19 CalCERTS did act correctly and the decision is well  
20 reasoned and well founded.

21 I would also like to point out that Mr.  
22 Haddock refers to a section of the statute where it  
23 refers to certification. Where this process and the  
24 process that CalCERTS went through for these 2  
25 individuals was not certification but was in response

1 to complaint that CalCERTS received. Actually,  
2 numerous complaints that CalCERTS received and this  
3 process came out of responding to those complaints.  
4 Not certification of the specific rater.

5           The action to decertify the raters was the  
6 result of the complaint response process.

7           Again, we urge this Commission to adopt the  
8 well reasoned and well founded decision that the  
9 Committee recommend and presented before you today.  
10 We believe that it is well decided. That they did  
11 spend their time in evaluating the evidence that was  
12 presented. And we note that as we talk about the  
13 evidence that never once throughout this entire  
14 process did either Mr. Hoover or Mr. Davis present  
15 evidence that would explain why they entered data in  
16 the rating system that was clearly inaccurate and  
17 could not be correct.

18           They had numerous opportunities. Including  
19 the evidentiary hearing before the Committee and at no  
20 time, at no time even today, are they here explaining  
21 how they managed to enter incorrect data repeatedly  
22 into the CalCERTS registry.

23           Again we would just like to state that we  
24 are strongly in support of the Committee's  
25 recommendation to dismiss with prejudice the complaint

1 against CalcERTS.

2 CHAIRMAN WEISENMILLER: Thank you. Any  
3 other parties want to speak at this time?

4 MR. BACHAND: If I might, Chairman  
5 Weisenmiller, Commissioners Peterman and Douglas and  
6 the spirit of Mr. McAllister.

7 I just want to thank you for your incredible  
8 effort on this and to let you know that CalcERTS and  
9 our staff appreciates the consideration and  
10 thoughtfulness that you've done and we will continue  
11 to support Commission, the HERS raters, the HERS  
12 industry, the Public Utilities Commission as we move  
13 forward into AB 758, AB 32 and the Energy Upgrade  
14 California Program. We intend to continue to improve  
15 and support that - all of those efforts. Thank you.

16 CHAIRMAN WEISENMILLER: Okay. Thank you.  
17 For the record, I would note that Commissioner  
18 McAllister wanted to be here today. Certainly this is  
19 an issue that he's passionate about and the HERS stuff  
20 but has an obligation to represent the state in  
21 another forum. And I was sort of in the position of  
22 losing one of two Commissioners but the other forum is  
23 focusing primarily on energy efficiency so  
24 Commissioner McAllister drew the short straw. But,  
25 again, he's certainly very interested in this and

1 regretted that he was not here today.

2 MR. BACHAND: I realize that I neglected to  
3 introduce myself. I'm Mike Bachand, President of  
4 CalCERTS.

5 CHAIRMAN WEISENMILLER: Thank you. Okay.  
6 In terms of, if there's no other parties then we have  
7 some Public Comment -

8 COMMISSIONER DOUGLAS: Chairman  
9 Weisenmiller, just before we go to Public Comment, let  
10 me ask if staff has any comments at this point.

11 Staff was not a party to this matter. We  
12 asked staff to provide information - to be available  
13 to provide information to the proceeding. I think  
14 that it would be helpful to the Commission to hear  
15 staff's perspective now that you've heard both parties  
16 and you've seen the propose decision.

17 MR. PENNINGTON: So thank you. Yes. Staff  
18 supports the proposed decision. It's not our role to  
19 but we believe that it's valid and it is well  
20 reasoned.

21 Staff did not direct CalCERTS in how to take  
22 disciplinary action related to this complaint. And  
23 it's not our practice to do that. So we don't have  
24 that direct public connection with CalCERTS which  
25 operates as a private entity.

1           So those are basically my comments. I  
2 appreciate your efforts on this. Hopefully this will  
3 help the HERS Program to kind of get its act together  
4 a little bit better and move in the future to the  
5 written procedures that you proposed. And so I think  
6 that will be appreciated by everyone.

7           My name is Bill Pennington, just forgot to  
8 say that. I'm the Deputy Division Chief for Energy  
9 Efficiency and Renewable Energy at the Commission.

10           CHAIRMAN WEISENMILLER: Thank you. Mr.  
11 William Barrett.

12           MR. BARRETT: My name is William Barrett and  
13 I am the whistleblower in this case. I wish to thank  
14 the California Energy Commission and CalCERTS in their  
15 work in the preliminary investigation phase of this  
16 complaint.

17           I would urge the Commission to refer the  
18 complaint to the California AG's Office for  
19 disposition to the various government agencies that  
20 have statutory or regulatory authority to pursue a  
21 formal investigation and prosecution of this matter.

22           It is time to put forward a structure to  
23 hold the large, multi-rater shops responsible for data  
24 inputted into the database. Large, multi-rater shops  
25 over 5 should have to post a bond \$1 million like what

1 general contractors are required to do. And do their  
2 own quality audits of the raters they employ.

3 CalCERTS should be given the ability to  
4 control the actions of large, multi-rater shops when  
5 an employee of a large, multi-rater shop runs afoul of  
6 CalCERTS they are just let go. Just the price of  
7 doing business. There is no downside for the large,  
8 multi-shop rater owner. The new rater can be hired to  
9 take their place. This must change.

10 The consequences for entering false data has  
11 to fall upon the owner of the large, multi-rater  
12 shops. Many problems in large, multi-rater shops  
13 revolve around one issue - the use of sample method in  
14 alterations. This loophole should be closed. It  
15 makes sense to use simple method in new construction  
16 because the crews, the units installed, the layouts,  
17 the homes are similar.

18 This is not the case in alterations. I  
19 believe there is an ingrained climate of corruption at  
20 Valley Duct Testing that comes from the top and goes  
21 through the entire organization.

22 The California Energy Commission's duty is  
23 clear. Stop all CalCERTS rater business at Valley  
24 Duct Testing until a full and complete investigation  
25 is completed by the California AG's office and other

1 various agencies.

2 Thank you very much.

3 CHAIRMAN WEISENMILLER: Thank you. Ralph  
4 Coleman?

5 MR. COLEMAN: Thank you, Mr. Chairman. Mr.  
6 Chairman, my name is Ralph Coleman. I'm the owner of  
7 Western Air Systems Certification. We are a HERS  
8 rater. My provider is CalcERTS.

9 Too many years ago, as a representative to  
10 General Electric Air Condition Division, I began my  
11 journey with the California Energy Commission as we  
12 set forth the standards for the HVAC industry. I  
13 retired 4 years ago as Vice President of Train Air  
14 Conditioning for the California Markets and I opened  
15 my business as a HERS rater. I took my training and  
16 certification through HERS, signed the documents that  
17 stated that I was fully aware that I needed to abide  
18 by their rules and regulations.

19 For the record, I have not made a complaint  
20 against either one of these gentlemen and/or their  
21 company. I am not a complainant. As the owner of  
22 Western Air my primary responsibility is to acquire,  
23 train and retrain contracting clients. To date I have  
24 about 73 such clients, including builders, HVAC  
25 contractors and homeowners. In addition to that, I

1 hire and train raters. And maintain that process.

2 For that I am fully responsible. Maybe one  
3 of the old adages in law is if you have a question  
4 follow the money. How does this money thing work?  
5 Well, I sell my services to these customers. They pay  
6 me. I, in turn, pay the rater. I, in turn, pay  
7 CalCERTS and CalCERTS does my certification process.  
8 So if you look at the focal point of that, who is it?  
9 It's me. I'm responsible for this process.

10 I'm also responsible for how these raters  
11 perform in the marketplace. You know the worst thing  
12 that could happen to me is to lose a customer. And so  
13 I can't afford to have, and I do have right now 3 and  
14 I'm hiring the fourth rater in my company, I can't  
15 afford to have these raters out there doing their  
16 testing outside of a protocol that's set by forward by  
17 CalCERTS or acting as they would choose to act. They  
18 have to represent me, my company and CalCERTS. So I'm  
19 very concerned about that. And, again, I'm the one  
20 that's responsible for that.

21 Here recently, this - I've been having a lot  
22 of concerns about what's happening. I recently met  
23 with a large HVAC contracting customer here in the  
24 Sacramento market soliciting his business. During the  
25 discussion I was told, I said, "Well, you know, you're

1 about 15 percent high in pricing based on a rating  
2 company out of the Bay Area and he never fails  
3 anything." Well, that's just not impossible. Maybe  
4 we don't fail it but we don't pass it.

5 The second thing is that I recently just met  
6 with another contractor and he says well, my  
7 contractor does the equipment charging. I'm not  
8 allowed. I'm not a contractor so I can't do that type  
9 of thing. We need more enforcement of the  
10 regulations. Certainly not less.

11 And the owner of these large, and I'm not  
12 that large, but these large companies need to be held  
13 responsible. I go to hire these young fellows as HERS  
14 raters after they come out of these classes. They  
15 don't have anything. They don't have any testing  
16 equipment. Most of them don't even have a vehicle.  
17 They certainly don't have insurance. So I furnish  
18 everything they've got to keep these young people out  
19 there and employed in the industry.

20 Again, the owner is responsible. To lay it  
21 all at the feet of the rater doesn't make sense. I  
22 mean I direct my people. I'm sure most good  
23 businessmen direct their employees. Thank you for  
24 your time.

25 CHAIRMAN WEISENMILLER: Thank you. John

1 Flores.

2 MR. FLORES: I first want to thank you for  
3 allowing me to speak. My name is John Flores. I'm  
4 the owner of Valley Duct Testing. Eric and Patrick  
5 are my employees.

6 I've stayed behind the scenes throughout  
7 this whole process and I feel it's time for me to  
8 speak up.

9 I first want to say that CalCERTS has been a  
10 great partner for the last 7 years. This whole  
11 investigation started with a disgruntled ex-Valley  
12 Duct Testing employee filing a complaint with no  
13 support. Through the 7 years, I also had a great  
14 working relationship with the CEC Enforcement Group,  
15 especially Tav Commins.

16 When I found out about the suspension of my  
17 2 raters I called Tav. He said he would look into it  
18 and get back to me. On December 19, Tav sent me an  
19 email and it said that he and Jim Holland both agreed  
20 that before suspension there much be discussion with  
21 the tech and some time to reschedule jobs, if needed.  
22 I have a copy of that email.

23 Jim is also going to call CalCERTS. Soon  
24 after this email the CEC Enforcement Group would not  
25 take any calls from any HERS raters and emails would

1 be directed to the provided for answers.

2 On July 6 CalCERTS sent a letter to the  
3 Commission related to the complaint filed against my  
4 company. In that letter it says that employees of  
5 Valley Duct Testing testing an entire new development  
6 in Stockton. They said it was fraudulently passed as  
7 Title 24 compliant when it clearly was not.

8 The residents in this development will not  
9 benefit from the energy savings. These units are part  
10 of the failed QA for Eric and Patrick. I have  
11 prepared a spreadsheet that show that the average  
12 leakage for all 17 units was 6.5 percent, only half a  
13 percent higher than what the compliance for a new  
14 construction project would be. Because they thought  
15 it was compliance they also did refrigeration charge  
16 verifications that were not needed. Seems like an  
17 honest mistake.

18 If you take out the refrigeration fails that  
19 they did not need to be done and inaccurate testing  
20 done by CalCERTS the following QA fails were left.  
21 For air there were 2 duct air leakage fails, 2 QII  
22 fails. This is for a total of 4 houses. For Patrick  
23 there was 4 duct leakage fails, 1 RCA fail and 1 QII  
24 fail. A total of 11 homes QA'd out of approximately  
25 7,500 total homes done by Eric and Patrick in a span

1 of around 4 years. Seems like a very small  
2 percentage. One-tenth of 1 percent of their jobs were  
3 QA'd.

4 In CalcERTS Quality Assurance Program it  
5 says that they are to provide a written detailed  
6 report of all QA's done and give that report to the  
7 rater. I've been a HERS rater since 2005 and have not  
8 received one detailed report of QAs. Either they  
9 decided not to do the report or did not do the QAs. I  
10 believe that if Eric and Patrick were given these  
11 reports that these problems would not have happened.  
12 Also in CalcERTS subscription agreement it says in  
13 number 2 arbitration of disputes that if mediation of  
14 parties can't be reached that the conflict shall be  
15 determined by neutral, binding arbitration. Pretty  
16 clear.

17 I am speaking as a long-time HERS rater that  
18 I would not want any of this to happen to me. I am  
19 asking the Commission to intercede on this action  
20 against these 2 raters. I would hate to see this  
21 happen to other raters. CalcERTS should not be able  
22 to take a raters livelihood away without giving them  
23 the failures and let them prove their innocence.

24 Thank you for your time.

25 CHAIRMAN WEISENMILLER: Thank you.

1           MR. FLORES: I have all the documentation  
2 if you need it.

3           CHAIRMAN WEISENMILLER: If you want that in  
4 the record then you must submit it to the docket.  
5 That's the bottom line.

6           MR. FLORES: Okay.

7           CHAIRMAN WEISENMILLER: If it's confidential  
8 don't submit it to the docket.

9           George Nesbitt I think is on the line.

10          MR. NESBITT: (PHONE LINE OPENED MID  
11 SENTENCE) so ultimately for the rating industry it  
12 gives the providers the power to decertify raters for  
13 something as simple as not wearing the right clothes  
14 and representing the brand, or even less.

15          I'd also like to - I strongly disagree with  
16 staff's assertion that Title 24 is silent on  
17 discipline and therefore it's up to the providers.  
18 And I think it's bad public policy to allow private  
19 companies to control the discipline process for raters  
20 who are regulated under Title 20. You'll get  
21 different processes and that's not fair.

22          I also strongly disagree with the contention  
23 that the complaint process is different than QA just  
24 because it was initiated by a complaint shouldn't  
25 really matter; although, maybe you're a little more

1 focused on specific issues.

2 And I was emailed, I was cc'd, on that ex  
3 patriot email. I did not write that email -

4 CHAIRMAN WEISENMILLER: The name is ex  
5 parte.

6 MR. NESBITT: Pardon my French. I'm not in  
7 Rome.

8 [LAUGHTER]

9 MR. NESBITT: I submitted written comments  
10 the day of the hearing and basically I stated that  
11 these staff has directed raters to decertify raters.  
12 And what that email said is that - also want to add  
13 that while it - there are definitely obvious problems  
14 with the raters and there are definitely some  
15 failures. Whether - I'm not sure whether  
16 decertification is appropriate. I'm not quite sure on  
17 that.

18 Also want to say that I think the decision  
19 to not pursue investigation of Valley Duct testers is  
20 correct because the Commission does not have  
21 jurisdiction over rating companies. Plus, it is the  
22 obligation of the provider to do that and cost is not  
23 prohibitive.

24 And then my last point I want to make is  
25 that I think that the decision is correct in

1 acknowledging if you look at the roles and  
2 relationships between providers and raters. I've been  
3 suggesting this for a long time and I suggest you  
4 start with an informal meeting between the CEC, all  
5 the providers and raters. And then ultimately open it  
6 up to more stakeholders.

7 CHAIRMAN WEISENMILLER: Thank you. Any  
8 other comment on this question? On the line or in the  
9 room?

10 COMMISSIONER DOUGLAS: So Commissioners, I'd  
11 like to speak to a number of the Items that we've  
12 heard today. I'd like to start by saying that this  
13 was a – this issue presented complex legal questions  
14 for the Committee to grapple with. We ended up doing  
15 a tremendous amount of legal research in areas that  
16 typically are not brought before the Commission.

17 The Energy Commission complies with due  
18 process regulations. We don't adjudicate due process  
19 regulations and so our – really from my perspective,  
20 as the attorney Commissioner, when I saw the complaint  
21 come in my first thought was, "Huh. That might be one  
22 for the courts." My second thought was, "Well, why  
23 don't we take a really hard look at this and see if we  
24 believe that our regulatory structure does what we  
25 intend it to do."

1           In the HERS Program what we intend, what we  
2 have tried to create, is a marketplace that is created  
3 by regulation but that is nevertheless a marketplace  
4 in which there are multiple providers, not just one  
5 provider. Multiple providers. And we have had  
6 multiple providers in the past and we hope to have  
7 multiple providers in the near future. And we do have  
8 multiple providers. Just not in every aspect of the  
9 HERS Program.

10           We are very, very careful to the point of  
11 being at times risking cross the line to overbearingly  
12 picky on the curriculum that the providers use and  
13 train to. And we review in great detail the  
14 substantive requirements and the substantive training  
15 programs before we will approve such a program. And I  
16 have more than once been subject to rather intense  
17 criticism or concern for the speed at which we do  
18 those reviews and the thoroughness, which we take upon  
19 ourselves to do for these reviews. And, at the same,  
20 the vision of the program is that it will be these  
21 providers who will certify raters and who will have  
22 the authority to decertify raters. And the  
23 Commission, in its wisdom or lack thereof of when it  
24 set up this program, did not put in any substantive  
25 requirements. We certainly allow decertification. We

1 did not say that there had to be any particular  
2 process. We did not reserve for ourselves any role in  
3 that and we have never attempted to exercise any role  
4 in decertifications of raters.

5           The – we have endeavored through the  
6 construct of this program to establish a marketplace  
7 that will be able to be self-policing and not have the  
8 Energy Commission adjudicate matters between raters  
9 and providers. The propose decision before you opens  
10 the door for some of those policy decisions by the  
11 Commission to be reconsidered.

12           A number of stakeholders have stepped up and  
13 raised concerns about what should be the  
14 responsibility if any are an owner of a multi-rater  
15 firm. The hearing itself raised concerns that the  
16 Committee expressed in the proposed decision on the  
17 process that was actually followed. Not that it  
18 lacked entirely the elements that we would like to see  
19 in that kind of process. The elements that we would  
20 certainly hold ourselves to if this were – if we were  
21 talking about a state program. But that it did not  
22 tie them together in the way that we would like to  
23 see.

24           I'll say a few more words about that. The  
25 scope of the proceeding that we set out, and the

1 Committee was quite directive in how we handle this  
2 proceeding, was quite narrow.

3           We began with the very simple and clear  
4 statement / question, "Does due process apply?" We  
5 could spend years talking about due process but the  
6 fundamental question is "Does due process apply?"  
7 Secondly, if due process applies what process is due?  
8 That gets us, frankly, further afield from the area in  
9 which we are typically called upon to adjudicate. But  
10 we asked that question of the parties. We asked that  
11 question of ourselves.

12           And, finally, and this was really the bulk  
13 of the hearing in terms of hours, what process was  
14 actually followed in this case? And we believe that  
15 these 3 questions would get us to an answer that would  
16 satisfy the Commission's inquiry in this matter.

17           The – we did not – and the one thing I would  
18 like to clarify from CalCERTS from Ms. Luckhardt's  
19 statement, is that this hearing was not an opportunity  
20 for Hoover and Davis to prove or disprove what might  
21 or might not have happened and why certain records may  
22 or may not have entered incorrectly. And, in fact,  
23 while we allowed a small amount of examples of issues  
24 that certain parties thought had arisen we  
25 specifically and very clearly did not set out to

1 adjudicate the question of whether or not something  
2 had occurred that would rise to a falsification of  
3 data or anything like that. We did not ask that  
4 question. We did not give them an opportunity to  
5 present on that question.

6           What we began with and what we really ended  
7 with was a question of whether due process applied in  
8 this case. And given the way that we set up the  
9 program, first of all. Secondly, the way in which we  
10 implement the program, which is as hands off as the  
11 regulations tell us to be and a very thorough review  
12 of existing case law in the question of due process.  
13 I can say to you that I am quite confident that with  
14 the review that we've done I do not believe that there  
15 are due process requirements in this program. And  
16 that's said, as Mr. Haddock points out, people do  
17 commit their livelihood to this program. They go  
18 through an intensive and an expensive training. They  
19 work as HERS raters. Now HERS raters have other -  
20 have skills that are more broadly applicable than just  
21 the HERS Program but decertification is a very serious  
22 action to have incurred any person. And so as we got  
23 to the real - the area where we spent the most time,  
24 what process was actually followed. It raised in my  
25 mind a question. Of whether we want to require

1 written decertification policies. Whether we want to  
2 give more direction to providers about how to conduct  
3 decertification.

4           And that does not mean whether we want to  
5 make the decision ourselves. I am quite convinced  
6 that we do want to make the decision ourselves but I  
7 think that we can consider additional policies that  
8 give more guidance as to what the Commission would  
9 view as more acceptable. And I think that there is  
10 some basic issues that we lay out in the decision that  
11 form the foundation of what I currently think that we  
12 want to think about and we want to propose for  
13 stakeholder comment.

14           So to – I’ll just – Mr. Nesbitt raised a  
15 couple of policy questions. I think, as did other  
16 stakeholders really, one of the things that the  
17 proposed decision attempts to do is to extricate the  
18 policy questions from the adjudicative matter and put  
19 it into a policy forum where it is best dealt with.

20           Policy questions raised by a number of  
21 stakeholders may have merit but the adjudicative  
22 problem in which this complaint occurred is not, in my  
23 view, the best way to raise it. We don’t have all of  
24 the parties in the room who have an interest in it.  
25 We haven’t framed the issues in a way which we can

1 really address them in a policy basis.

2           So the recommendation of the Committee, that  
3 we initiate an investigation, a policy investigation,  
4 or a rulemaking or an investigation leading up to a  
5 rule making is something that the Committee will  
6 pursue. I expect Commission McAllister to really take  
7 the lead in that.

8           Those are my comments. I have to say that  
9 it was a very, as I said, it was a – we took very  
10 seriously – I'll say it this way. We took very  
11 seriously the responsibility to look at our program  
12 design and to seriously consider the question of  
13 whether we had inadvertently set up a situation of  
14 state action. And I'm quite convinced from reviewing  
15 the party's briefs from the reviewing and reading some  
16 of the legal research that our team did that there's  
17 not. And, so, in my mind that ends the legal inquiry  
18 and turns this into a policy inquiry.

19           COMMISSIONER PETERMAN: Commissioner  
20 Douglas, thank you for all your comments. It was very  
21 well said and very helpful.

22           Very little to say in response to that  
23 except appreciate you separating out the required  
24 scope of the evidentiary hearing in this decision as  
25 from the policy questions.

1           And I'm happy to hear that the Commission  
2 will be looking further into the policy issues raised  
3 and that CalCERTS will be looking at its process as  
4 well for opportunities for improvement. Thank you to  
5 the Committee for seriously diving into this issue.

6           CHAIRMAN WEISENMILLER: I'd also like to  
7 thank your – also two comments. One of them was in my  
8 first time at the Energy Commission I was involved  
9 very much in solar energy and at that point the notion  
10 was to do a solar water heating program and based upon  
11 that push, certainly very strong support from the  
12 governor. We provided a 55 percent tax credit which  
13 ultimately was hundreds of millions of dollars to that  
14 industry. We provided enormous push. The Governor's  
15 prestige. Everything this agency could do.  
16 Everything state government could do. And it turned  
17 out that there were real consumer problems. In fact,  
18 our lead Commissioner had a solar water system  
19 installed on his house, which leaked forever so that  
20 was endemic of the types of issues we ran into. And  
21 others, ran into. And, ultimately, at the point we  
22 were relying upon the State Licensing Control Board to  
23 sort of go forward and go through and deal with the  
24 licensing requirements for solar installers. We were  
25 also relying on the Department of Consumer Affairs. A

1 lot of training, a lot of certification here but,  
2 again, that program ultimately set solar water heating  
3 back for decades in terms of not having enough focus  
4 on the consumers. And, again, that was – solar water  
5 heating has been around for a long time but I think in  
6 terms of the consumer issues, it became much more  
7 serious when you had that level of state support.  
8 And, so, similarly in this area, I mean HERS is sort  
9 of a new, novel concept to deal with the energy issues  
10 in a way. But as we look at stuff and as we build  
11 this into our programs, we encourage people to use it.  
12 It's got to be right. Otherwise it's going to have a  
13 real black eye for the industry. And, again, not  
14 getting into the merits of stuff but I think certainly  
15 one of the things which we've struggled with on a  
16 number of cases this year, is as we go forward  
17 encourage people to provide – in an era when the state  
18 has a very, very limited budget provide some  
19 significant incentives. Provide, certainly, some  
20 significant regulatory push, policy push in those  
21 areas. It's very, very important that we keep our  
22 focused on the ultimate consumer and the implications  
23 of our programs. And so we do need programs to make  
24 sure these things are effective and work.

25 Now having said that I would note, I was

1 involved in a PUC proceeding once as an expert  
2 witness but not on legal issues, which is called the  
3 Colmac case. And ultimately the PUC was asked to deal  
4 with a number of issues of contract law. And it was  
5 an unusual decision because the PUC decided while it  
6 has a lot of competency in a variety of areas contract  
7 law is not necessarily one of those and basically  
8 referred the issue to the Courts.

9           And so, again, I think as we parse through  
10 these issues, again, there are areas which, certainly,  
11 are pretty well developed institutions or law that we  
12 will ultimately be deferring to because, again, it  
13 gets beyond what we really have as part of our core  
14 competency with a lot of experience in.

15           So, again, appreciate you diving into these  
16 things. It's very serious. As you said, certainly  
17 affecting someone's livelihood is very important. At  
18 the same time trying to maintain the integrity of the  
19 programs is critical too. So.

20           COMMISSIONER DOUGLAS: Thank you. Thank you  
21 both for your comments. And, Chairman Weisenmiller,  
22 you did make me smile with the reference to the  
23 contract law question because in some ways it is  
24 analogous. I do have some regrets for, in a citing  
25 case, requiring - having everybody there spend about 3

1 hours of their lives adjudicating or attempting to  
2 adjudicate a contract issue that I later went to the  
3 Commission and said, "Well, this is contract law.  
4 This is not something that I am even going to opine  
5 on." And in the case of the due process issues that  
6 arose where I really began to feel uncomfortable is  
7 the question of what processes do should due process  
8 apply because that is really where we're getting into  
9 the area of the courts.

10           It's - as a state entity we, of course, have  
11 a lot of experience in complying with due process  
12 requirements and setting up programs that either do so  
13 when there are programs or, at some times, working  
14 with other parties at an arms length in order for them  
15 do things. In this case, that really, really is where  
16 we focused the inquiry. Is there a due process issue  
17 that this program created? And, as I've said, I  
18 strongly believe there is not. Yet, I would also like  
19 to see some improvements, a number of improvements, in  
20 the way that this program is - we've now had a number  
21 of years of experience in implementing this program.  
22 It's a very good time for us to take a step back and  
23 work with stakeholders in making the program better in  
24 a number of ways. And, as you note, the obligation to  
25 keep the customer in mind as the ultimate arbiter of

1 whether or not we are being successful is a good one  
2 as well as making sure that it's a program that works  
3 the way we intend it to work. That raters can, in  
4 fact, come into this program and make a livelihood.  
5 That they're performing a service that we need. We'd  
6 like to see - in any case, there are a number of  
7 policy issues that we'd like to work with on a policy  
8 basis.

9 But at this point if there are no other  
10 questions I'll make a motion on this Item. I didn't  
11 ask you, Mr. Lemei, if you have anything to add.

12 MR. LEMEI: Nothing to add.

13 COMMISSIONER DOUGLAS: Thank you. All  
14 right. With that, I move approval of Item 9.

15 COMMISSIONER PETERMAN: I'll second.

16 CHAIRMAN WEISENMILLER: All those in favor?

17 (Ayes.) Item 9 passed unanimously. Thank  
18 you.

19 Go on to Item 10. The Energy Innovations  
20 Small Grants. Possible approval of nine grant  
21 applications, totaling \$854,230 from the PIER Program  
22 that is PIER Electricity and Natural Gas Funding.  
23 Mike Gravely?

24 MR. GRAVELY: Good morning, Commissioners.

25 I'm Mike Gravely from the R&D Division. Today we are

1 bringing before you 9 grants from our small grant  
2 program to be awarded. This is for the results of a  
3 solicitation of 1101 that looked at electricity,  
4 natural gas and transportation related grant  
5 applications. We received 66 grants, of those 32 were  
6 approved for – or completed the administrative  
7 screening as complete packages to be scored, 24  
8 received a minimum score and we're here today  
9 requesting your approval for 9 grants to be approved.

10 I'll give you just a brief summary of each  
11 of the grants and I'll be glad to answer questions, if  
12 you have any.

13 Item A is a grant process that – an  
14 assessment into the manufacturing process using  
15 soluble organic small molecules instead of the  
16 traditional polymers in the production of photovoltaic  
17 materials that will improve the overall for lab  
18 building and the – reduce the manufacturing cost of  
19 photovoltaics.

20 Item B is looking at the feasibility of a  
21 two-stage evaporative cooling tower concept and will  
22 have independent third-party testing done by the  
23 Department of Energy. If successful this technology  
24 has the potential of reducing energy costs of water  
25 towers by 10 percent and reducing the amount of water

1 consumption required by 10 percent.

2           Item C is a project that will look at a new  
3 wind turbine generator design that is lighter and  
4 cheaper. This design is expected to prevent – perform  
5 better in the variable environment. The motors that  
6 work for wind systems as opposed to the continuous  
7 operation of a classical motor.

8           Item Number D is looking at the feasibility  
9 of using a submerged venture tube in the wave energy  
10 format. This technology will be demonstrated and they  
11 will evaluate the amount of energy that can be  
12 obtained. And they're also looking at the cost of  
13 producing that energy to see if this project has  
14 commercial viability for the next stage of production.

15           Item E is a project that's looking at the  
16 feasibility of extracting oxygen electrons from the  
17 water – looking at the water to hydrogen fuel concept.  
18 This project will be evaluating 10 different catalysts  
19 and will determine the best ones in performing to look  
20 at future analysis.

21           Item Number F. This project will look at  
22 the new gasification technology and the production of  
23 substituted natural gas from waste energy, renewable  
24 feedstocks such as bio-solids, food waste and biomass.  
25 That technology will increase the overall process

1 efficiency and also increase the product reliability.

2           Item Number G. This project will determine  
3 the feasibility of deploying a laser-based natural gas  
4 sensor technology into measuring the condition of  
5 underground natural gas pipes. And basically what  
6 they'll be doing is taking a currently handheld  
7 technology that's being used in the field, install it  
8 permanently that could allow for continuous reporting  
9 and status of underground of natural gas pipelines.

10           Item Number H. This project will evaluate  
11 the effectiveness of real-time eco-routing navigation  
12 systems for electric vehicles. The object here is to  
13 shorten the travel time. It's estimated that if a  
14 successful application this could reduce or provide 10  
15 percent additional range on electrical vehicles, which  
16 is one of the factors for customer acceptance.

17           The final grant, Number I, this will look at  
18 a new integrative process for ethanol production from  
19 biofuels and feedstock. It has a potential of  
20 reducing the cost of production 20-40 percent.

21           With that, I'll be glad to answer any  
22 questions. Thank you.

23           CHAIRMAN WEISENMILLER: Thank you, Mike.  
24 Commissioners, any questions or comments?

25           COMMISSIONER PETERMAN: All sound like very

1 interesting projects. I support and I've heard very  
2 positive things about the small grants program and  
3 glad to see it continuing with such projects.

4 CHAIRMAN WEISENMILLER: Motion?

5 COMMISSIONER PETERMAN: So I'll make the  
6 motion. I'll move Item 10.

7 COMMISSIONER DOUGLAS: Second.

8 CHAIRMAN WEISENMILLER: All those in favor?

9 (Ayes.) Item 10 passed unanimously. Thank  
10 you, Mike.

11 Let's go on to Item 11. Cal State  
12 University, San Diego. Possible approval of Amendment  
13 8 to Contract 500-98-014 with the Trustees of the  
14 California State University on behalf of the San Diego  
15 campus to add \$1,790,000 and extend the contract 18  
16 months. David Chambers?

17 MR. CHAMBERS: Good morning, Commissioners.  
18 My name is David Chambers, Energy Innovation Small  
19 Grant Program Manager. I'm recommending for approval  
20 Amendment 8 to the contract to administer the small  
21 grant program with the trustees of California State  
22 University.

23 This amendment will add \$1.79 million in  
24 natural gas funds for 1 ½ years of natural gas  
25 research through the small grant program. The current

1 funding will expire following the summer's natural  
2 gas research solicitation.

3 With the approval of this funding the  
4 program will be able to conduct 5 natural gas research  
5 solicitations and fund between 20-25 projects.

6 If there are any questions I would be happy  
7 to answer them.

8 CHAIRMAN WEISENMILLER: Thank you.  
9 Commissioners, any questions or comments?

10 COMMISSIONER DOUGLAS: Just the comment that  
11 as Commissioner Peterman noted this is a really  
12 tremendous program and I'm glad to see this Item move  
13 forward. I'll move approval of Item 12.

14 COMMISSIONER PETERMAN: I believe that this  
15 has been the same administrator since 1998 and again  
16 it has been a successful program so I'm happy to  
17 second that motion.

18 CHAIRMAN WEISENMILLER: Okay. All those in  
19 favor?

20 (Ayes.) This Item passed unanimously.  
21 Thank you, David.

22 MR. CHAMBERS: Thank you.

23 MR. LEVY: Pardon me. For the record,  
24 Commissioners. Commissioner Douglas said Item 12. I  
25 think she meant Item 11.

1                   CHAIRMAN WEISENMILLER: That's correct. We  
2 voted on Item 11.

3                   COMMISSIONER DOUGLAS: Thank you. I did  
4 mean Item 11.

5                   CHAIRMAN WEISENMILLER: So let's have all  
6 those in favor of Item 11?

7                   (Ayes.) Item 11 passed unanimously.

8                   Let's go on to Item 12. Thank you. This is  
9 University of California, San Diego, Scripps  
10 Institution of Oceanography. Possible approval of  
11 Contract 500-12-001 for \$300,000 with the Regents of  
12 the University of California on behalf of the San  
13 Diego campus, Scripps Institution of Oceanography.  
14 This is also PIER Electricity Funding. Guido Franko,  
15 please.

16                  MR. FRANCO: Good afternoon, Commissioners.  
17 My name is Guido Franco. I am the team lead for  
18 Environmental Research in your PIER Program.

19                  Prior PIER Research has shown that the  
20 energy system is vulnerable to climate change. For  
21 example, the snow pack is expected to be diminished in  
22 the future and that will impact idle power generation.  
23 Also, high temperatures will increase energy demand,  
24 electricity demand and also would reduce the  
25 efficiency of thermal power plants.

1           But to better understand the potential  
2 impacts and to develop some adaptation options we rely  
3 on climate projections. The Energy Commission has  
4 been supporting the development of climate projections  
5 using state of the science, state of the art models,  
6 but we have found some deficiencies in the models.  
7 For example, even when they are driven by the same  
8 inputs given by global climate models they tend to  
9 produce different projections for California.

10           So this project is to allow Scripps to go in  
11 deep analysis of why these projected climate models  
12 are producing somewhat different projections. And,  
13 again, this work at the end will be very useful for  
14 studies looking at the potential impacts to develop  
15 adaptation options for the adaption options for the  
16 energy sector.

17           This work is going to be also useful for  
18 energy forecasting. We are working together with our  
19 energy forecasting group here in the Commission to  
20 make sure that this type of work is useful for energy  
21 forecasting work in the Commission.

22           With that I am ready to answer any questions  
23 that you may have.

24           CHAIRMAN WEISENMILLER: Commissioners, any  
25 questions or comments?

1           COMMISSIONER PETERMAN: I'll just say that  
2 the energy system's ability to adapt to climate change  
3 is a very important issue for the state. And  
4 obviously it's something that's been discussed in the  
5 Governor's workshop on climate change and I'm very  
6 supportive of continuing this activity.

7           COMMISSIONER DOUGLAS: I'll just add that  
8 California has some of the most sophisticated modeling  
9 and analysis of the potential impacts of climate  
10 change on California environment that I think exists  
11 in the world. And I'm really pleased to see this work  
12 continue. Thank you, Guido, and others on your team  
13 for helping us continue to bring it forward.

14           CHAIRMAN WEISENMILLER: Yeah. I was going  
15 to say certainly based upon the record in this IEPR  
16 and the Governor's Conference, I think it's clear that  
17 we need to think more and more about how climate  
18 change influences how we do things here in terms of  
19 the demand forecast, applied planning and ultimately I  
20 think we'll have to work more and more about thinking  
21 about the implications in terms of adaption. As we  
22 look at citing and other things, just how does that -  
23 how are we doing to not only mitigate by reducing  
24 greenhouse gas emissions but also prepare our system  
25 for the impacts that could be occurring 10, 20, 30 or

1 40, 50 years from now. And, again, it's very, very  
2 difficult to see in the future but it seems one of the  
3 clear aspects is that we are facing climate change and  
4 facing much greater variability and volatility in what  
5 we're going to experience.

6 So, again, certainly appreciate your  
7 leadership role in this.

8 COMMISSIONER PETERMAN: So if there are no  
9 other comments, I will move Item 12.

10 COMMISSIONER DOUGLAS: Second.

11 CHAIRMAN WEISENMILLER: All those in favor?

12 (Ayes.) So Item 12 is approved. Let's go  
13 on to Item 13. Arcadia Unified School District.  
14 Possible approval of agreement ARV-12-003 for a grant  
15 of \$300,000 to Arcadia Unified School District. And  
16 this is John Mathias.

17 MR. MATHIAS: Good afternoon. I'm John  
18 Mathias with the Emerging Fuels and Technologies  
19 Office.

20 Arcadia Unified School district applied for  
21 funding under the Emerging Fuels and Technologies  
22 Office's Alternative Fuels and Infrastructure Grant  
23 Solicitation. The purpose of which was to encourage  
24 the establishment of alternative transportation fuels  
25 infrastructure and to accommodate the deployment of

1 alternative fuel vehicles in California.

2 This agreement would install a new CNG  
3 fueling system at the Arcadia Unified School District  
4 for use by the district's fleet vehicles and by CNG  
5 buses and vehicles visiting from other school  
6 districts.

7 Arcadia Unified School District currently  
8 has 9 CNG buses in its fleet and is planning to  
9 increase that to 15 CNG buses. The district's  
10 existing station is becoming increasingly unreliable  
11 and parts for the existing system are not readily  
12 available. The new system that will be installed will  
13 provide both time-fill and fast-fill fueling options.  
14 And the Energy Commission, a portion of the budget  
15 would be \$300,000 with match funding of \$279,837.

16 Arcadia Unified School District is located  
17 in Los Angeles County, within the South Coast Air  
18 District. And for each CNG bus that the district uses  
19 it reduces greenhouse gas emissions by about 30 tons  
20 per year compared to diesel vehicles. And the  
21 reduction in pollution emissions from the use of CNG  
22 buses as opposed to diesel buses also provides health  
23 benefits to students as well as the general public.

24 Happy to answer any questions.

25 CHAIRMAN WEISENMILLER: Thank you.

1 Commissioners, any questions or comments?

2           COMMISSIONER PETERMAN: Commissioners, I'll  
3 comment that the AB 118 program has been a leader both  
4 in the state and nationally in developing  
5 infrastructure for alternative fuels and this is just  
6 another example of that type of effort. This  
7 particularly meets a very niche need, the school bus  
8 need, and I'm happy to see that the Arcadia Unified  
9 School District has that success with their existing  
10 CNG buses and have a willingness to expand that fleet.  
11 So I am supportive of this project.

12           So if there are no other comments from the  
13 dais I will move Item 13.

14           COMMISSIONER DOUGLAS: Second.

15           CHAIRMAN WEISENMILLER: All those in favor?

16           (Ayes.) Item 13 passes unanimously.

17           So Item 14. Calexico Unified School  
18 District. Possible approval of Agreement ARV-12-002  
19 for a grant of \$83,329. And this is ARFVT funding  
20 again. And John again.

21           MR. MATHIAS: Thank you, again.

22           Calexico Unified School District applied for  
23 funding under the same solicitation as the previous  
24 Item.

25           This agreement would refurbish and upgrade

1 the CNG fueling system at the Calexico Unified School  
2 District by replacing the non-functioning compressor  
3 with two upgraded compressors.

4 The station is used by the school district –  
5 by school district vehicles, by other fleet vehicles  
6 in the area and is also open to members of the public.

7 Calexico Unified School District currently  
8 has 3 CNG buses in its fleet and CNG vehicles from  
9 Imperial Unified School District, the City of  
10 Holtville and Kraft Foods are also expected to utilize  
11 the refurbished CNG station.

12 Significant additional demand from other CNG  
13 vehicles is also expected due to the planned  
14 decommissioning of the CNG fueling station in El  
15 Centro, which is the only other CNG station in the  
16 Imperial Valley.

17 The District's existing station is becoming  
18 increasingly unreliable due to the age of the station  
19 and the lack of availability of replacement parts for  
20 the existing station. The project budget is \$83,329  
21 and the refurbished station will provide both time-  
22 fill and fast-fill fueling options, and by 2015 the  
23 station's displacement of diesel and gasoline usage is  
24 expected to reduce greenhouse gas emissions by 163  
25 tons per year and reduce NOx emissions by 1.7 tons per

1 year.

2 And I'm happy to answer any questions.

3 CHAIRMAN WEISENMILLER: Thank you.

4 Commissioners, any questions or comments?

5 COMMISSIONER PETERMAN: Commissioners, I'll  
6 just say maintaining the quality of our alternative  
7 fuel infrastructure is very important as well as  
8 having that infrastructure available publicly. This  
9 project satisfies both. As I think you'll hear in the  
10 next Item we are seeing an increase in a demand for  
11 these vehicles and we want to make sure that the  
12 fueling infrastructure is present as well. So I am  
13 supportive of this Item.

14 And if no other comments, I will move Item  
15 14.

16 COMMISSIONER DOUGLAS: Second.

17 CHAIRMAN WEISENMILLER: All those in favor?

18 (Ayes.) Item 14 passes unanimously.

19 Let's go on to 15. Alternative and  
20 renewable fuel vehicle buy-down incentives. Possible  
21 approval of a total of \$122,000 of ARFVT funding. And  
22 Andre Freeman.

23 MR. FREEMAN: Good afternoon, Commissioners.

24 My name is Andre Freeman. I'm a member of the  
25 Emerging Fuels and Technologies Office in the Fuels

1 and Transportation Division.

2 Today I will be seeking approval for the 5<sup>th</sup>  
3 batch of incentive reservations funded through the  
4 Alternative Renewable Fuels and Vehicle Technology  
5 Program.

6 This batch of incentives will cover the  
7 purchase of 14 natural gas vehicles, one propane  
8 vehicle and the current total dollar amount will be  
9 \$122,000.

10 The Natural Gas and Propane Vehicle Buy-Down  
11 Program is designed to promote the purchase of clean  
12 alternative fueled vehicles to replace the aging  
13 gasoline and diesel fleet in California. This program  
14 provides incentives for consumers to adopt new  
15 technologies, which provide both environmental and  
16 economical benefits to the state of California.

17 The Natural Gas and Propane Vehicle Buy-Down  
18 Program began taking reservations on February 8. I'm  
19 glad to say that now we have utilized all the natural  
20 gas funding that was available. And we've had a lot of  
21 interest in the propane as well, including 2 gentlemen  
22 who are outside during the Business Meeting.

23 This year we've supported the purchase of  
24 over 600 vehicles, including 500 natural gas vehicles  
25 and 100 propane vehicles.

1 I'd like to thank you for your  
2 consideration on this item and can answer any  
3 questions that you may have.

4 CHAIRMAN WEISENMILLER: Thank you.  
5 Commissioners, any questions or comments?

6 COMMISSIONER PETERMAN: First, I'd just like  
7 to thank staff for their diligent work on this buy-  
8 down program and congratulations successfully awarding  
9 all the funding in this area. Hope that the  
10 investment that the AB 118 program has made in this  
11 space will spur further investment in the private  
12 sector as natural gas prices come down the economics  
13 should be improving for consumers and am supportive of  
14 this grant. And I recommend it for adoption. With  
15 that, then, I will move Item 15.

16 COMMISSIONER DOUGLAS: Second.

17 CHAIRMAN WEISENMILLER: All those in favor?  
18 (Ayes.) Item 15 passed unanimously.

19 Item 16. Minutes. Possible approval of the  
20 June 13, 2012 Business Meeting minutes.

21 COMMISSIONER DOUGLAS: Move Item 16.

22 COMMISSIONER PETERMAN: I'll second.

23 CHAIRMAN WEISENMILLER: All those in favor?  
24 (Ayes.) Item 16 passed unanimously.

25 17. Lead Commissioner and Presiding Member

1 Reports.

2 COMMISSIONER PETERMAN: I'll just make one  
3 quick report that since our last meeting, I believe, I  
4 have hired is maybe not the quite right word but  
5 acquired a great new transportation advisor from  
6 Leslie Barody from the - maybe some will say stole or  
7 borrowed however you will. I got a lot of nods in the  
8 audience. I will say borrowed Leslie Barody from the  
9 Transportation Division.

10 She has been the EB Team Lead there - she's  
11 been the team lead on electric vehicles and I'm  
12 looking forward to her expertise contributing to my  
13 leadership in that area and thank you to Pat Perez,  
14 the Division Deputy, for that alone. Thank you.

15 COMMISSIONER DOUGLAS: I also have a report.  
16 I have neglected to report on May is Bike Month. And  
17 it's only, it's still July. So I'm only a month late  
18 or so. It's still 2012, as well.

19 So Sacramento wide the totals for May is  
20 Bike Month are very impressive - 1,750,620 miles were  
21 logged by Sacramento area cyclists in July. This is a  
22 record and initially the movement was trying to  
23 achieve 1,000,000 miles and now it's so far above  
24 1,000,000 miles maybe they'll set a goal of 2,000,000  
25 miles.

1           There were 8,939 cyclists registered in the  
2 Sacramento area. And in the employer challenge, the  
3 Energy Commission came in 14<sup>th</sup> overall. This is  
4 including both large and small employer – large/medium  
5 size and small employers. We count as a medium size  
6 employer. And we – I have to admit were edged by REI  
7 in the medium size employer category this year. So we  
8 won that category last year. We were quite close this  
9 year. We came in second in the medium size category  
10 with 15,123 miles logged. Significantly more,  
11 actually, than the Energy Commission staff pledged and  
12 106 percent of our total miles pledged.

13           Within the Energy Commission I, of course,  
14 offered to buy a beer for everyone who rode more than  
15 me. I am only going to have to buy 4 beers. So  
16 that's good for my pocketbook. It came at the expense  
17 of quite a lot of hours on the road. I met my pledge  
18 of 600 miles, exactly, which my advisor believes is  
19 suspicious but I'll just tell you that I just sort of  
20 dragged myself across that last mile and threw the  
21 bike in the garage because it was quite a challenge.  
22 So I will be organizing the May is Bike Month  
23 Celebration. I'd like to acknowledge the people at  
24 the Commission who rode more than 500 miles this May:  
25 Don Kondolian, as always number 1 at 1,300 miles. So

1 he only did more than twice what I did. Paul  
2 Marshall at 683 miles. Tav Commins at 660. Eric  
3 Jensen 639 miles. They're the ones who I will be  
4 buying drinks for. I came in at 600. We have Steve  
5 Martinez at 568; Jon Matthews at 549; and Ken Celli  
6 who, must be said, rides a hybrid pedal electric bike  
7 most of the time in from Davis. And I kind of  
8 understand that because we go against the wind both  
9 ways, at 533 miles. So a really good showing from the  
10 Energy Commission team. Overall, 59 people from the  
11 Energy Commission participated and logged at least  
12 some miles.

13 I know 2 people who I did not read on that  
14 list completed a double century in the last 2 days of  
15 April that did not count for us. So that would have  
16 put us very, very, very close to REI. And if my  
17 Advisor had logged the rest of his miles it would have  
18 put us even closer. Kind of amusingly, at the bottom  
19 of the Energy Commission's list, 2 of the 3  
20 individuals who logged the least miles are my advisors  
21 with Jennifer Nelson logging 10 miles and Galen Lemei  
22 logging 17. He claims that there were another 20 or  
23 30 that he didn't get around to registering. So, in  
24 any case, I want to express appreciation to all of the  
25 staff at the Energy Commission who contributed to our

1 total and continue to make May is Bike Month a really  
2 fun activity and priority for our organization.

3 CHAIRMAN WEISENMILLER: Thanks. I'm just  
4 going to cover a couple of things briefly.

5 One is I went back to DC in mid-June and had  
6 a series of meetings that were fairly good. I met  
7 with, basically, all the FERC Commissioners and also  
8 the FERC compliance people. And I guess the basic  
9 message – and with them and with others I went to  
10 through the California Summer of 2012 issues in terms  
11 of supply and demand and covered other issues as part  
12 of the conversation but with FERC my basic message was  
13 to be alert on market manipulation.

14 Also, there are – all of us are trying to  
15 make dimming reality more of a – demand response more  
16 of a reality at least in the half hour time as opposed  
17 to the day ahead time and pointed out that there's a  
18 WECC tariff issue that we need help from FERC on.

19 And also that it was very, very important  
20 for them to implement all the reforms coming out of  
21 the September outage. That to the extent that we  
22 couldn't deal with N-1, you know, what was a relative  
23 mild period going in distress. We really can't have  
24 any more screw-up's by any of the balancing  
25 authorities. And certainly encourage them to take

1 appropriate action to make sure that that was cleaned  
2 up.

3           Along with them I met with the Chair of the  
4 NRC, now past-Chair, and gave the basic message that  
5 for San Onofre the need was safety first. That we  
6 were going to be prepared one way or another for this  
7 summer, looking at subsequent summers. If there were  
8 issues but they needed to deal with the safety of the  
9 unit. And I managed to get a preview from him of what  
10 was, I think, what I heard later was the NRC's staff's  
11 report at the problems at San Onofre and I'll talk a  
12 little about those in a second.

13           Also, met pretty extensively with DOE. I  
14 talked about the battery charger issues and they  
15 ultimately filed my ex parte statement for that  
16 conversation but also met with the RPE people and met  
17 with Lauren Azar and talked about there's a desire to  
18 do better coordination between us and DOE. And I was  
19 looking particularly at ways we might do a better job  
20 at coordinating the R&D. That covers not only PIER  
21 stuff but, obviously, 118 stuff. And there's sort of  
22 growing interest, I'd say, on the federal level on  
23 ZEV. And they even talked of trying to do some sort  
24 of sun shot type of initiative on ZEV coming up.

25           So, again, I think we really want to reach

1 out and try to leverage the federal funds to help  
2 here. Also met with Senator Boxer's office, actually  
3 met with Senator Boxer and met with Senator  
4 Feinstein's office. Certainly met with a variety of  
5 people in D.C. including Steve Black from the  
6 Interior.

7           So pretty exhausting trip, actually. And  
8 D.C., in its predictable fashion, started out with a  
9 very pleasant Sunday and was about 100 plus both on  
10 humidity and temperature by the time I left town. And  
11 then went from that to a very good workshop  
12 Commissioner Peterman and I had in L.A. on – we were  
13 looking – originally it was framed more or less to  
14 look at the what's the cooling issues but, again, San  
15 Onofre sort of overtook that. And that was the first  
16 preview from the CAISO of some of the options that  
17 we're looking at to try and deal with sort of the  
18 futures. For this summer we've done a number of  
19 things to really deal with the liability issues,  
20 particularly in Orange County and San Diego County.  
21 And as we look at San Onofre going forward, one of the  
22 things that came out from the NRC staff's  
23 investigation was that the computer model that MHI  
24 used to design the steam generators was an error by a  
25 factor of 3 or 4 in terms of the velocity of the flow

1 of fluids through the steam generators which is  
2 leading to vibration issues. There were other  
3 problems along with that that was probably the most  
4 chilling.

5           And so those issues – there's also  
6 manufacturing differences that may explain why the  
7 problem are much more apparent at 3 as opposed to 2.  
8 At this point Edison is working on a plan to restart  
9 2. I haven't heard recently where that is. I've been  
10 having weekly calling with Litizinger and Niggley on  
11 status but that basically – the hope is to be able to  
12 file an application with the NRC in early August that  
13 will then lead to a restart of San Onofre 2. What I  
14 understand from the NRC is that there will be another  
15 public hearing on that application where Edison will  
16 explain it. There will be a second one where when the  
17 NRC reaches a decision. But the NRC was pretty clear  
18 that they agreed with me on safety first. They're  
19 going to take their time and make sure it's right. I  
20 think this model problem's really make you wonder how  
21 good a shape 2 is in, is the bottom line.

22           Three, basically at this point is they're  
23 not really, Edison, is not focused on trying to deal  
24 with that. We may also have to deal with the replace  
25 and repair mode for the steam generators at unit 3,

1 which again could take a long time. Based upon all  
2 that, as a contingency, what we're doing is developing  
3 plans now to basically make sure we develop a reliable  
4 grid in Southern California for next summer and  
5 subsequent summers without San Onofre.

6 And, again, that's not necessarily the  
7 outcome. Unit 2 may well come back but I think on a  
8 planning basis we have to look at having at least a  
9 contingency plan if it doesn't come back for next  
10 summer or the following summer.

11 So anyway there will certainly be more news  
12 on that in the next month or two but a lot of interest  
13 on that part.

14 I think those - I may well remember other  
15 things from the D.C. blur but I think those were at  
16 least the highlights for people.

17 So with that let's go to Chief Counsel's  
18 Report.

19 MR. LEVY: Good afternoon, Commissioners.  
20 Other than to note that the 2 folks who logged the  
21 double centuries before April were Caryn Holmes and  
22 Lisa DeCarlo from the Chief Counsel's Office, I have  
23 no report.

24 COMMISSIONER DOUGLAS: I was extremely  
25 impressed by what they managed to do but a little

1 disappointed in their timing.

2 MR. LEVY: Duly noted.

3 CHAIRMAN WEISENMILLER: And the Executive  
4 Director's Report?

5 MR. OGELSBY: Just an announcement that  
6 we've appointed David Ashukian to be the Deputy  
7 Director for Efficiency & Renewables. David if you'd  
8 stand up so they can recognize you. I'm pleased to  
9 make this public announcement.

10 Dave comes to us from most recently the  
11 Public Utilities Commission but I'm also happy to say  
12 that he returns to the Energy Commission because he  
13 had service here at the Energy Commission in multiple  
14 capacities and even prior to that work at the Air  
15 Resources Board and CalTrans so he brings a wealth of  
16 experience and energy and other service to this  
17 position and I'm looking forward to this contribution  
18 to the Energy Commission.

19 CHAIRMAN WEISENMILLER: Certainly, want to  
20 welcome Dave here. I've certainly worked with Dave  
21 when he was at the Energy Commission but also would  
22 note was impressed with the last experience I had  
23 working with him at the PUC was that when the  
24 legislature had a hearing in San Bruno that was the  
25 first event there that was emotional in terms of the

1 community. Dave was one of the few representatives  
2 who actually went and listened to people. And, as I  
3 said, it was a tough hearing for anybody at the PUC to  
4 be at.

5 COMMISSIONER DOUGLAS: I'd like to welcome  
6 you here as well. I had the privilege of being the  
7 Lead Commissioner for Efficiency for some – what  
8 turned into some very, quite significant period of  
9 time and I will just say that you are going to be  
10 leading a very high performing division that has a  
11 tremendous amount of responsibility. And we place the  
12 work that's done in the efficiency and renewables part  
13 of this organization, as some of our bread and butter,  
14 very high priority, long term – provides us with some  
15 of our really great achievements over time. So we  
16 look forward to that continuing.

17 And I really want to welcome you and the  
18 vision and the experience and the ability that you're  
19 going to bring to helping us continuing to take this  
20 forward and take it to the next level.

21 COMMISSIONER PETERMAN: Yes, Dave. Welcome.  
22 I'll just echo Commissioner Douglas' comments as Lead  
23 Commissioner on Renewables I'm very excited to have  
24 you on the team. When you were appointed I heard from  
25 staff who had worked with you before how excited that

1 they were that you were returning. So your  
2 reputation precedes you and I'm sure we'll have a  
3 tremendously great experience. So welcome.

4 MR. ASHUKIAN: I just want to say thank you  
5 for the warm welcome and I'm really excited to be back  
6 and looking forward to digging right in and have just  
7 basically reintroduced myself to the staff and gotten  
8 to know everybody and I do see this as a tremendous  
9 team. And I do really look forward to making some  
10 great accomplishments here. Thanks.

11 CHAIRMAN WEISENMILLER: Thank you.

12 Public Advisor's Report?

13 MS. JENNINGS: Thank you. I have nothing to  
14 report except to note that you have a Public Comment  
15 card. Those individuals were able to talk to staff  
16 while they were waiting for their time and they have  
17 their issue resolved or at least handled for today.  
18 So they have departed. Thanks.

19 CHAIRMAN WEISENMILLER: Well, thanks.

20 Thanks. Is there any other Public Comment?

21 This meeting is adjourned.

22 (Whereupon, at 12:31 p.m., the business  
23 meeting was adjourned.)

24

25

