

Commissioners Present

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

Staff Present

Michael Levy
Rob Oglesby
Jennifer Jennings
Harriet Kallemeyn

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Adam Gottlieb	
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Kristen Driskell	6
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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
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Public Comment

William Barrett
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John Flores, Valley Duct Testing
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1. CONSENT CALENDAR 12
- a. U.S. GEOLOGICAL SURVEY. Possible approval of Amendment 1 to Contract 500-09-012 with the U.S. Geological Survey for a no-cost time extension to extend the contract term for 12 months, update the contract terms and conditions, and add an additional researcher. This proposed amendment will not affect the overall budget amount. (PIER electricity funding.)
 - 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.)
 - d. CALIFORNIA INSTITUTE FOR ENERGY AND ENVIRONMENT. Possible approval of Amendment 1 to Contract 500-10-023 with the Regents of the University of California on behalf of the California Institute for Energy and Environment, for a 12 month no-cost time extension to August 15, 2013, and to update the terms and conditions of the contract. (PIER electricity funding.)
 - e. CALSTART, INC. Possible approval of Amendment 1 to Contract 500-09-019 with CALSTART, Inc. for a budget reallocation and to update the terms and conditions of the contract. There is no change to the work scope or the original funding amount. (PIER electricity funding.)

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- 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.)
- g) Physical Sciences, Inc. \$95,000 to determine the feasibility of effectively deploying permanent open-path, laser-based, natural gas sensors to provide rapid warning of potentially explosive pipeline leaks. (PIER natural gas funding.)
- h) University of California, Riverside. \$94,714 to determine the feasibility of calculating a travel route for an electric vehicle (EV) that will require the least amount of energy for the trip, and thus extending the range of the EV. (PIER electricity 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 21st 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 money
2 in terms of moderation in film. And so I thought that
3 was terrific and, so, congratulations and to the whole
4 team. Really professional. Really brought in all the
5 different partners in this project. And, even for us,
6 for me, who I get to hear about these projects in the
7 Business Meetings, I learned a lot just having all
8 that information in a concise manner. And so I think
9 if you add a cat playing a piano then you're going to
10 really rise in the YouTube rankings. So looking
11 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 actually
2 issued a decision on this and never issued any right
3 of way grant. So we're - we would really like some
4 clarification from the Commission as to what is
5 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. So
2 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 are
2 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, we
2 became very familiar with the proposed project and the
3 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 decertified
2 Mr. Hoover and Mr. Davis it provided each of them with
3 notice of its concerns, opportunity to question
4 CalCERTS about those concerns, an opportunity to
5 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 cannot
2 do is delegate the whole job and ask CalCERTS to
3 decide for itself what factors should be considered.

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

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

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

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

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

6 CHAIRMAN WEISENMILLER: Thank you. Other
7 parties?

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

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

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

23 The evidence clearly showed that it was
24 impossible for these raters to have actually done what
25 they said they had did and reported in the program.

1 Therefore, this is not some nice argument about
2 constitutional due process. This is about whether
3 individual raters did their job.

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

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

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

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

1 numerous complaints that CalcERTS received and this
2 process came out of responding to those complaints.
3 Not certification of the specific rater.

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

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

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

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

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

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

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

15 CHAIRMAN WEISENMILLER: Okay. Thank you.
16 For the record, I would note that Commissioner
17 McAllister wanted to be here today. Certainly this is
18 an issue that he's passionate about and the HERS stuff
19 but has an obligation to represent the state in
20 another forum. And I was sort of in the position of
21 losing one of two Commissioners but the other forum is
22 focusing primarily on energy efficiency so
23 Commissioner McAllister drew the short straw. But,
24 again, he's certainly very interested in this and
25 regretted that he was not here today.

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

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

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

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

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

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

25 So those are basically my comments. I

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

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

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

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

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

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

1 own quality audits of the raters they employ.

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

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

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

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

1 Thank you very much.

2 CHAIRMAN WEISENMILLER: Thank you. Ralph
3 Coleman?

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

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

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

70

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

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

20 Here recently, this - I've been having a lot
21 of concerns about what's happening. I recently met
22 with a large HVAC contracting customer here in the
23 Sacramento market soliciting his business. During the
24 discussion I was told, I said, "Well, you know, you're
25 about 15 percent high in pricing based on a rating

1 company out of the Bay Area and he never fails
2 anything." Well, that's just not impossible. Maybe
3 we don't fail it but we don't pass it.

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

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

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

24 CHAIRMAN WEISENMILLER: Thank you. John
25 Flores.

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

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

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

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

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

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

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

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

1 percentage. One-tenth of 1 percent of their jobs were
2 QA'd.

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

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

23 Thank you for your time.

24 CHAIRMAN WEISENMILLER: Thank you.

25 MR. FLORES: I have all the documentation if

1 you need it.

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

5 MR. FLORES: Okay.

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

8 George Nesbitt I think is on the line.

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

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

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

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

3 CHAIRMAN WEISENMILLER: The name is ex
4 parte.

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

7 [LAUGHTER]

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

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

23 And then my last point I want to make is
24 that I think that the decision is correct in
25 acknowledging if you look at the roles and

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

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

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

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

25 In the HERS Program what we intend, what we

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

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

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

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

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

23 I'll say a few more words about that. The
24 scope of the proceeding that we set out, and the
25 Committee was quite directive in how we handle this

1 proceeding, was quite narrow.

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

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

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

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

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

1 give more direction to providers about how to conduct
2 decertification.

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

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

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

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

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

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

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

25 And I’m happy to hear that the Commission

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

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

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

24 Now having said that I would note, I was
25 involved in a PUC proceeding once as an expert witness

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

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

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

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

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

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

1 as well as making sure that it's a program that works
2 the way we intend it to work. That raters can, in
3 fact, come into this program and make a livelihood.
4 That they're performing a service that we need. We'd
5 like to see - in any case, there are a number of
6 policy issues that we'd like to work with on a policy
7 basis.

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

11 MR. LEMEI: Nothing to add.

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

14 COMMISSIONER PETERMAN: I'll second.

15 CHAIRMAN WEISENMILLER: All those in favor?

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

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

23 MR. GRAVELY: Good morning, Commissioners.
24 I'm Mike Gravely from the R&D Division. Today we are
25 bringing before you 9 grants from our small grant

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

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

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

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

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

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

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

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

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

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

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

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

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

24 COMMISSIONER PETERMAN: All sound like very
25 interesting projects. I support and I've heard very

1 positive things about the small grants program and
2 glad to see it continuing with such projects.

3 CHAIRMAN WEISENMILLER: Motion?

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

6 COMMISSIONER DOUGLAS: Second.

7 CHAIRMAN WEISENMILLER: All those in favor?

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

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

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

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

1 research solicitation.

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

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

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

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

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

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

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

21 MR. CHAMBERS: Thank you.

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

25 CHAIRMAN WEISENMILLER: That's correct. We

1 voted on Item 11.

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

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

6 (Ayes.) Item 11 passed unanimously.

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

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

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

25 But to better understand the potential

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

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

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

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

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

25 COMMISSIONER PETERMAN: I'll just say that

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

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

13 CHAIRMAN WEISENMILLER: Yeah. I was going
14 to say certainly based upon the record in this IEPR
15 and the Governor's Conference, I think it's clear that
16 we need to think more and more about how climate
17 change influences how we do things here in terms of
18 the demand forecast, applied planning and ultimately I
19 think we'll have to work more and more about thinking
20 about the implications in terms of adaption. As we
21 look at citing and other things, just how does that -
22 how are we doing to not only mitigate by reducing
23 greenhouse gas emissions but also prepare our system
24 for the impacts that could be occurring 10, 20, 30 or
25 40, 50 years from now. And, again, it's very, very

1 difficult to see in the future but it seems one of the
2 clear aspects is that we are facing climate change and
3 facing much greater variability and volatility in what
4 we're going to experience.

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

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

9 COMMISSIONER DOUGLAS: Second.

10 CHAIRMAN WEISENMILLER: All those in favor?

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

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

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

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

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

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

23 Happy to answer any questions.

24 CHAIRMAN WEISENMILLER: Thank you.

25 Commissioners, any questions or comments?

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

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

13 COMMISSIONER DOUGLAS: Second.

14 CHAIRMAN WEISENMILLER: All those in favor?

15 (Ayes.) Item 13 passes unanimously.

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

20 MR. MATHIAS: Thank you, again.

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

24 This agreement would refurbish and upgrade
25 the CNG fueling system at the Calexico Unified School

1 District by replacing the non-functioning compressor
2 with two upgraded compressors.

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

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

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

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

1 And I'm happy to answer any questions.

2 CHAIRMAN WEISENMILLER: Thank you.

3 Commissioners, any questions or comments?

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

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

15 COMMISSIONER DOUGLAS: Second.

16 CHAIRMAN WEISENMILLER: All those in favor?

17 (Ayes.) Item 14 passes unanimously.

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

22 MR. FREEMAN: Good afternoon, Commissioners.

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

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

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

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

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

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

25 I'd like to thank you for your consideration

1 on this item and can answer any questions that you may
2 have.

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

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

15 COMMISSIONER DOUGLAS: Second.

16 CHAIRMAN WEISENMILLER: All those in favor?

17 (Ayes.) Item 15 passed unanimously.

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

20 COMMISSIONER DOUGLAS: Move Item 16.

21 COMMISSIONER PETERMAN: I'll second.

22 CHAIRMAN WEISENMILLER: All those in favor?

23 (Ayes.) Item 16 passed unanimously.

24 17. Lead Commissioner and Presiding Member
25 Reports.

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

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

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

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

25 There were 8,939 cyclists registered in the

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

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

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

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

1 fun activity and priority for our organization.

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

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

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

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

1 up.

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

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

24 So, again, I think we really want to reach
25 out and try to leverage the federal funds to help

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

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

1 leading to vibration issues. There were other
2 problems along with that that was probably the most
3 chilling.

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

21 Three, basically at this point is they're
22 not really, Edison, is not focused on trying to deal
23 with that. We may also have to deal with the replace
24 and repair mode for the steam generators at unit 3,
25 which again could take a long time. Based upon all

1 that, as a contingency, what we're doing is developing
2 plans now to basically make sure we develop a reliable
3 grid in Southern California for next summer and
4 subsequent summers without San Onofre.

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

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

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

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

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

23 COMMISSIONER DOUGLAS: I was extremely
24 impressed by what they managed to do but a little
25 disappointed in their timing.

1 MR. LEVY: Duly noted.

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

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

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

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

1 who actually went and listened to people. And, as I
2 said, it was a tough hearing for anybody at the PUC to
3 be at.

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

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

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

1 precedes you and I'm sure we'll have a tremendously
2 great experience. So welcome.

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

10 CHAIRMAN WEISENMILLER: Thank you.

11 Public Advisor's Report?

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

18 CHAIRMAN WEISENMILLER: Well, thanks.

19 Thanks. Is there any other Public Comment?

20 This meeting is adjourned.

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

23

24

25