

BEFORE THE
CALIFORNIA ENERGY COMMISSION

DOCKET	
12-AAER-1	
DATE	MAR 23 2012
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In the matter of) Docket No. 12-AAER-1
)
 Implementation of S.B. 454)
) STAFF WORKSHOP
 (Public Resources Code)
Section 25402.11))

Enforcement Rulemaking
Appliance Efficiency

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

FRIDAY, MARCH 23, 2012
10:00 A.M.

Reported by:
Peter Petty

APPEARANCESPresent:Commissioners Present:

Karen Douglas
Galen Lemei, Her Advisor

Staff Present:

Michael Leao
Tovah Ealey
Gary Fay
Dennis Beck
Gary Flamm

Also Present: (* Via WebEx)Stakeholders

Patrick Splitt, APP-TECH
Richard D. Upton, American Lighting Association (ALA)
Clark Linstone, ALA
Jerry Desmond, Jr., Plumbing Manufacturers
International
Cheryl English, Acuity Brands Lighting
Valerie Winn, PG&E
John Green, Cooper Lighting
Bob Nichols, IPSSA
Gary Fernstrom, PG&E
*Jodi Rosenberg, Watermark Designs
*Alex Jackson, NRDC
*Yanda Zhang, Hescong Mahone Group (HMG)
*Frederick Desborough, California Faucets

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1 P R O C E E D I N G S

2 MARCH 23, 2011 10:04 A.M.

3 MR. LEAON: Good morning everyone. For the
4 record, my name is Mike Leاون. I'm the Office Manager
5 of the Appliances and Process Energy Office. Thank
6 you, everyone, for attending today. I know some of you
7 have come quite a ways for this meeting and I
8 appreciate your making the effort to be here. And to
9 those of you on WebEx, or on the phone, thank you for
10 calling in.

11 And I have just a few housekeeping
12 announcements and that will be followed by staff
13 presentation. And with me today is Tovah Ealey and
14 Gary Fay of staff who have been leading this effort in
15 the implementation of Senate Bill 454.

16 And just to clarify where we're at in the
17 process, this is the pre-rulemaking phase and today,
18 really, we're in listening mode, and we want to hear
19 your comments and receive your feedback regarding how
20 we should implement this authority under Senate Bill
21 454.

22 All right, with that again, just a few
23 housekeeping announcements. For those of you who may
24 not have been here before, restrooms are in the atrium
25 out the double doors and to your left. We do have a

1 snack room on the second floor, it's at the top of the
2 stairs, if you go out through the double doors and up
3 the stairs, you'll see a white awning off to your left,
4 there is a snack room there.

5 In the event of an emergency, we will need to
6 evacuate the building, an alarm would sound, and we
7 would ask that you follow staff out the main entrance,
8 onto Ninth Street, we will cross Ninth and P. and
9 gather in the park, kitty-corner from the Commission
10 here.

11 Today's workshop is being broadcast through our
12 WebEx Conferencing System; a written transcript of the
13 workshop will be posted on our website in about two
14 weeks.

15 And for those of you in the room who wish to
16 speak today, we would ask that you fill out a blue
17 card, which is available in the foyer, so that we could
18 get a sense of how many people want to speak and manage
19 our time accordingly. Also, during the public comment
20 period, please use the microphones at the center of the
21 room, at the podium here, so that people who are on the
22 WebEx can hear you. It is also helpful if you can give
23 the Transcriber, to my left, your business card when
24 you come up to speak so we can make sure that your name
25 and affiliation are reflected correctly in the

1 transcript.

2 For WebEx participants, you can use either the
3 chat or the raised hand functions to let our WebEx
4 Coordinator know that you have a question or a comment,
5 and we'll open up your line at the appropriate time.

6 For those participating only by phone and not
7 through WebEx, we will open the lines at the end of
8 each public comment period to give you an opportunity
9 to ask questions. And with that, I'll turn the
10 presentation over to Tovah. Thank you.

11 MS. EALEY: Good morning, everyone. Just to
12 sort of set the stage here, we are in the pre-
13 rulemaking phase of this rulemaking and that started
14 back in January with the Order Instituting Rulemaking.

15 Today is the workshop, and after today there
16 will be a draft of the Proposed Regulations published
17 for stakeholder comment and review, and then we will
18 likely have yet another workshop to gather your input.
19 The formal rulemaking, we are anticipating that that
20 will begin in August of this year with the filing of
21 the NOPA and ISOR, and that will start the 45-day
22 comment period.

23 The end of the process, we're hoping, will take
24 place in December with the adoption of whatever
25 regulations that have come out of this proceeding.

1 This again is our workshop agenda. After a
2 really brief presentation, we will launch right into
3 stakeholder comments, and we want to hear what the
4 industry has to say.

5 In our presentation today, I will be giving an
6 overview of the Appliance Efficiency Program. For
7 those of you who may not be very familiar with us, I'll
8 give a very brief overview of our current enforcement
9 practices, what we're doing now, what S.B. 454
10 authorizes us to do, other enforcement models that we
11 took a look at to see what practices and processes and
12 procedures we may be able to utilize, and then we'll go
13 into the Requests for Information.

14 If you have questions about the Appliance
15 Efficiency Program as I'm going along, questions that
16 are not pertinent to today's meeting, feel free to
17 write those down and catch one of us either at the end
18 of the proceeding, or you can just ask during this
19 comment period.

20 The Appliance Efficiency Program was
21 established about 30 years ago, over 30 years ago, were
22 the first of their kind in the country. They've been
23 adopted by other states. They're also the foundation
24 of NAECA, the Federal appliance regulations for
25 consumer products and, most important of all, they

1 produce significant savings here in the state.

2 Our program has four elements to it,
3 Regulations and Standards Development, which many of
4 you in the room are familiar with, having gone through
5 the battery charger rulemaking just recently, the
6 television rulemaking, and so on.

7 We have certification and compliance and our
8 Regulations, Title 20 requires us to collect data from
9 manufacturers, requires manufacturers to certify their
10 Title 20 regulated products to us, and that
11 certification shows us that these products are in
12 compliance with the Standards, and the Standards that
13 are existing. They also enable us to collect data in
14 the event that future rulemakings are called for.

15 For outreach, we do outreach basically at every
16 stage of the game here. During rulemaking, we have
17 stakeholder comments that we request, we have workshops
18 such as this.

19 During the Certification and Compliance phase,
20 we assist manufacturers in the certification process.
21 Questions come up: What do we need to show to you?
22 And we walk them through the process.

23 In the Enforcement stage, it has to do with
24 what do I have to do to comply? Okay, I'm out of
25 compliance, what do I need to do? And, again, it's how

1 to comply, how to certify, what to do, what test
2 methods are required, and so forth.

3 So an overview of the current enforcement
4 practices, really quickly: we receive a complaint and
5 these come from manufacturers, from consumers, from
6 other government agencies like *Energy Star*, or
7 Department of Energy. We attempt to verify the non-
8 compliance, we engage in a letter-writing campaign to
9 let the manufacturers and the retailers know what's
10 going on, "This was found." "Are you the manufacturer
11 of this product, first of all?" "Did you, Retailer,
12 stock all of these on the shelves?" "Somebody saw
13 this." "Talk to us, tell us."

14 We have the opportunity to engage in informal
15 administrative hearings and Title 20 gives us -- or the
16 Warren-Alquist Act gives us -- the authorization to
17 refer matters to the Attorney General's Office for
18 injunctive relief and, then, going into each of these
19 items in more depth.

20 Again, we receive a lot of our complaints in
21 enforcement matters from the Appliance Market Surveys
22 that we contract out for; the contractor sends out
23 teams of surveyors into retail stores, hardware stores,
24 in Northern, Central, and Southern California, and we
25 also get some of our complaints from folks who are out

1 there, folks of our staff who are out there shopping
2 and they say, "Hey, I saw a portable luminaire for sale
3 that did not meet the design standard." So we take a
4 look at what is the product involved, is this a
5 regulated product at all? Is it regulated by the Feds?
6 By the State? What's the manufacturer -- who is the
7 manufacturer? What is the model number, the brand, the
8 date of manufacture?

9 And then we ask ourselves, what is the nature
10 of the noncompliance? Is it a failure to certify? Is
11 it a failure to meet a standard? Are efficiency values
12 in question? These are the top three that we get.

13 And for failure to certify, it's very simple,
14 if it's not in the database, likely it hasn't been
15 certified. But also, what staff can do is see whether
16 or not certification is in process. We can check to
17 see if communication is going back and forth between
18 our certification staff and the manufacturer. If
19 that's the case, the enforcement staff will wait,
20 they'll wait to see where this will end up.

21 If it's a failure to meet a standard, we have
22 the ability to have a product tested, one, or two, or
23 three units of a product tested by our independent test
24 lab.

25 If it's a question of efficiency values that

1 were reported to us during certification, we can also
2 have the product tested to see what the values really
3 are. And we also have the authority to request the
4 manufacturer who has certified a product to provide the
5 test reports upon which that certification was based.
6 So we have those tools in our toolbox so far.

7 And verifying noncompliance, it's -- again, we
8 look to the database, we look to see whether the sale
9 or offer for sale of a product was confirmed through
10 the market survey or other means. And we can do
11 independent testing.

12 Once all of that is done, then the letters go
13 out, the first request, the second request, and these
14 letters will also tell the manufacturer, or retailer,
15 or both, what needs to take place for them to come back
16 into compliance if they are out of compliance.

17 The sections that are listed below here,
18 Section 1608(C), 1608(E) and (G), are the ones that
19 give us the authority to request test reports, do
20 testing, sometimes at the manufacturer's expense, if
21 the model is not certified or something has failed in
22 testing.

23 And for federally regulated appliances, these
24 are things like our showerheads, or consumer white
25 goods, they still need to be certified to us because

1 Title 20 wraps in the Federal Standards, as well as the
2 State only standards. So products like washing
3 machines, dryers, residential refrigerators, they still
4 need to be certified to us before they can be sold or
5 offered for sale legally in California.

6 The Informal Administrative Hearing process,
7 this would be to remove models from the database that
8 have been found to be not in compliance with the
9 Standard. We did this a couple of years ago with a
10 couple of models of commercial refrigerators in which,
11 actually, the efficiency values were in question; we
12 had the models tested and they failed. So they were
13 removed from the database and, thus, they cannot be
14 sold or offered for sale. I think in this case the
15 manufacturer reengineered the product and resubmitted
16 new test data, new certification data, so a new product
17 of that type is now on the market.

18 And, again, if there are no Efficiency
19 Standards, but the efficiency values are in question,
20 we can have the model's listing in the database updated
21 or amended.

22 And this just goes on to say that we have a
23 process for complaints and Requests for Investigation,
24 it's also in Title 20, Section 1230 and, of course, the
25 last option is referral of the matter to the Attorney

1 General's Office. So, in a nutshell, our process looks
2 like this: the blue boxes are what we have right now,
3 the green box is what S.B. 454 is granting us authority
4 to do to assess fines.

5 So the Legislature declared the following:
6 "Inadequate certification of appliances sold in
7 California undermines the State's ability to ensure
8 that products sold meet the State's Efficiency
9 Standards." This is -- this comes directly from the
10 bill, and I think it's also important to note that
11 products that are being sold in California without
12 certification, in other words, we cannot tell what the
13 efficiency values are because we don't have the data,
14 not only can they not be lawfully sold in California,
15 but it undermines the folks out there who are playing
16 by the rules. We have a lot of manufacturers who have
17 certified, they've been doing so for decades, and those
18 that are not gain an unfair business advantage, in our
19 opinion.

20 Here's the history of the bill. It was passed
21 by the Legislature and signed by the Governor in
22 October of 2011, became effective a couple months ago,
23 and now we are at the point where we have our hard work
24 to do to construct a process to add these to our
25 Regulations.

1 The Administrative Enforcement process will
2 include a fine, an Administrative Penalty not to exceed
3 \$2,500 for each violation, and this can be imposed or
4 assessed by the Energy Commission, or by a Court of
5 Law. The process that we create has to comply with the
6 APA, the Administrative Procedure Act, which includes
7 noticed, open hearings, unbiased presiding officer, and
8 so forth. This is very common for most enforcement
9 programs that we looked at in our research.

10 The amount of the Administrative Penalty will
11 be based on seven different factors that we must take
12 into consideration when assessing a fine and, again,
13 these factors are not -- these are not new, there are
14 several other agencies, state agencies that use similar
15 -- or the same or similar factors: nature and
16 seriousness of the violation, number of violations,
17 persistence, length of time, willfulness, a violator's
18 assets, liabilities, and net worth, and most important
19 to us, the harm to consumers and the State from wasted
20 energy, so that will have to be quantified in some
21 sense.

22 Before I go further, I'd like to introduce our
23 Commissioner, Karen Douglas, who just arrived, thank
24 you, and her Advisor, Galen Lemei.

25 COMMISSIONER DOUGLAS: Thank you, Tovah. And

1 good morning, everyone. I won't interrupt the flow of
2 the presentation. So, go ahead.

3 MS. EALEY: Uh, let's see, S.B. 454 will
4 require us to wait 30 days after giving written
5 notification of a violation before initiating our
6 process that we create for this. The penalties
7 collected can be used for public education and
8 outreach, public education on energy efficiency, and
9 then for additional enforcement.

10 And in the event that the matter goes to court
11 and the fines are assessed, we would be entitled to
12 reasonable costs for investigation and prosecution --
13 that is also another very common clause.

14 S.B. 454 had a provision concerning rebates
15 that are given for energy efficient equipment. It
16 would require that those rebates be disbursed only if
17 the installation was done by a licensed contractor.
18 That's not a part of this proceeding because we believe
19 it falls under the authority of the CPUC, the
20 California Public Utilities Commission.

21 As I said, we examined some other models for
22 enforcement, the USDOE, the California Air Resources
23 Board, Water Resources Control Board, and CalRecycle's.
24 We wanted to see, again, what are other folks doing,
25 what works for them, what do we not want to touch

1 because of the unique nature of our program? What they
2 have in common, it's really not that surprising,
3 identification and investigation of noncompliance,
4 assessment of penalties, formal, informal, and
5 settlement options, public disclosure of violations
6 and, again, compliance with the Administrative
7 Procedures Act.

8 So with that, these are some of the areas where
9 we are asking for your input, your suggestions, your
10 comments, any process that we construct to reflect our
11 program, the Appliance Efficiency Program, and our
12 stakeholders, and the industries that we interact with,
13 so we are looking for comments on administrative
14 procedure, on how shall we define violation, and
15 determining the Administrative Penalty. All of these
16 questions are in the Request for Information document,
17 I believe there are more copies out in the foyer if you
18 didn't get one.

19 The next steps in our rulemaking, again, would
20 be to evaluate the comments we get today, develop a
21 draft, conduct another workshop, and then launch into
22 the official rulemaking phase with the filing of Notice
23 of Proposed Action.

24 And for more information, we have the contact
25 numbers for this rulemaking, for the Docket, for the

1 Appliance Efficiency Program, which is at
2 Appliances@Energy.CA.Gov, and for the Public Advisor's
3 Office for any of those folks who need additional
4 assistance in connecting with us.

5 So with that, I don't know, Commissioner
6 Douglas, do you want to say a few words?

7 COMMISSIONER DOUGLAS: Thank you, Tovah. I
8 just wanted to say, this is a staff workshop, this is
9 the first workshop in this rulemaking, and typically I
10 might actually wait and let the staff workshops happen
11 before getting engaged, but this is a very important
12 matter, this new enforcement authority is important to
13 the Energy Commission, we really want to get it right,
14 we want to hear from you, and so I'm really here as an
15 observer.

16 I'm looking forward to the public comment and I
17 appreciate everyone being here and engaging at the
18 beginning of the process. So I think that is all from
19 me at this point. Thank you.

20 MS. EALEY: And, again, if there are anymore
21 blue cards for folks to make a public comment today,
22 I'd be happy to take them. Thank you.

23 MR. SPLITT: Excuse me, Tovah, this is Pat
24 Splitt from APP-TECH. This really isn't a comment, but
25 I just had a question about your presentation. And

1 there's a clarification that I would like to hear if I
2 could get it because I'm confused.

3 There's several places in the Energy Code where
4 there are requirements for equipment to be certified to
5 the Commission; there are other places where there's
6 just a requirement that it be certified. And I'm
7 trying to -- depending on who I ask, I get different
8 interpretations of whether they mean different things,
9 or the same thing, or if they don't understand what I'm
10 talking about.

11 MR. BECK: This is Dennis Beck from the Chief
12 Counsel's Office. What are you talking about when you
13 say "the Energy Code?"

14 MR. SPLITT: Title 24, Part 6.

15 MR. BECK: Title -- that's independent from
16 Title 20. The Regulations that we're proposing here go
17 only to Title 20 and what is required in Title 20.

18 MR. SPLITT: But I'm trying to figure out in
19 Title 24, Part 6, Section iii refers to the Appliance
20 Directory, and there it requires that equipment listed
21 in there, that section, be certified to the Commission.
22 Right down below that, there is another section of
23 other equipment in the same section where they just say
24 it has to be certified. To who? Where? This makes it
25 very confusing to understand what equipment we're

1 talking about and what we're supposed to find in the
2 Directory, or if it's not a directory, does that mean
3 we have to look somewhere else?

4 MR. BECK: I believe any time it says
5 "certified," it means to the Commission. I see Mr.
6 Flamm in the audience, I'm sorry to -- but perhaps you
7 could talk with this gentleman and clarify the
8 questions he has, what precisely he's referring to
9 since we don't have a copy of Title 24 in front of us,
10 and then if there are additional questions --

11 MR. SPLITT: Right, well it's just a matter if
12 you're planning on fining people for certain types of
13 equipment, it would be nice to know what equipment
14 we're talking about, what can be fined vs. what can't
15 be fined.

16 MR. BECK: This will only apply -- the
17 Regulations will only apply to equipment that is
18 required to be certified under Title 20. So if there's
19 something else in Title 24 -- as you may know, there is
20 an effort -- we recently passed regulations regarding
21 battery chargers, but in that, as well, we shifted the
22 certification requirements for self-contained lighting
23 controls into Title 20, as well, so that would be
24 covered there.

25 But I think the intent at this point is only to

1 enforce against, or have an enforcement scheme that
2 covers those appliances that are meant to -- that are
3 regulated under Title 20, and not Title 24. But that's
4 something that we'll certainly clarify as we go
5 forward.

6 MR. FLAMM: Gary Flamm from staff. I'm not
7 prepared to cite sections of Title 24, but there are
8 several different constructs about "certified" in Title
9 24; they are certified to the Energy Commission, which
10 for the 2013 Standards does say in accordance with
11 Section 1606 of Title 20. So I'm not confident that
12 there isn't a relationship of those products. I think
13 we need that discussion.

14 There's also certification requirements for
15 like windows to NFRC, roofing products, and hopefully
16 those are all defined in Title 24. So we do have some
17 broad statements about "certified," but it's my
18 understanding that we mean certified to other entities.
19 But there is also language about certified to the
20 Energy Commission, so there's a number of different
21 certification requirements in Title 24.

22 MR. LEAON: Thank you, Gary. All right, so why
23 don't we take the blue cards in the room and let me ask
24 if the Commissioner would like to call for the public
25 testimony? Or would you --

1 COMMISSIONER DOUGLAS: Mike, I'd be happy if
2 you do it.

3 MR. LEAON: Okay, thank you. All right, okay,
4 the first blue card, Richard -- oh, thank you -- Dick
5 Upton.

6 MR. UPTON: Commissioner, Richard Upton. I'm
7 President of the American Lighting Association. It's
8 an international trade association, it's made up of the
9 lighting designers, manufacturers of lighting fixtures,
10 portables, ceiling fans, controls, the manufacturers'
11 representatives, and the independent lighting retail
12 stores that sell those products in the United States,
13 Canada, and the Caribbean. And I do have my business
14 card for your Reporter. Excuse me if I have
15 difficulty, but you're a lectern short.

16 First, I think we would do well to say to you
17 we want to address about four issues that relate to our
18 interests concerning the Regulation and how you would
19 like to move forward to enforce it. And our opening
20 comment is the American Lighting Association strongly
21 supports efforts to help achieve a fair level playing
22 field in California. It's just very simple, it's not
23 fair for those manufacturers and retailers who operate
24 by the rules and for those people who choose not to.

25 But there's a great deal of difference between

1 people who are making some mistakes, or who are not up
2 to speed in what they need to do, as against flagrant
3 violations, and we'll try to address that. And having
4 visited with your staff on this issue, I have a sense
5 that you and the staff understands there's going to be
6 a difference in those things, as well.

7 We think one of the first things you could do
8 would be to help manufacturers and California retailers
9 of regulated products by developing and disseminating
10 model policies and procedures they can readily adopt to
11 help them be and stay in compliance. We think
12 recognizing that retailers are compliant and having
13 established effective procedures on occasion will --
14 not maybe -- will receive non-compliant products that
15 were shipped to them in error by mistake. In those
16 instances, manufacturers, nor retailers, should be
17 burdened with any kind of fine.

18 And let me expand on that if I may. Our
19 manufacturers operate with multiple distribution
20 facilities in the United States, and there will be
21 East, Midwest, South, or Northwest, and it's very
22 simple for someone trying to get product out of a
23 warehouse someplace in the west to make a mistake about
24 where things get shipped, and I'm totally convinced
25 that's going to happen along the way.

1 We strongly urge you to continue the practice
2 of issuing notifications of letters and warnings before
3 implementing any fines. We urge you to not allow other
4 entities to act on behalf of the CEC to initiate
5 lawsuits or pursue fines on noncompliant businesses
6 which have occurred on other California compliance
7 issues; we've experienced some of those such as
8 Proposition 65 with lead in Tiffany's, and it became
9 burdensome, difficult, expensive, and not very
10 productive for anyone, except those out trying to make
11 a dollar.

12 We suggest that when you launch your project,
13 that it be done carefully and put together in a
14 positive manner so as not to establish any kind of
15 culture that would stigmatize all California businesses
16 or manufacturers covered by the Regulations, as bad
17 operators who must be badgered to ensure they operate
18 properly and don't damage California or Californians.
19 Such an approach would be incorrect, negative, damage
20 sales and State and local tax collections and cause, in
21 my judgment, some companies to abandon California with
22 their products, which would mean less selection by the
23 consumer, higher prices, and less tax collections, and
24 loss of jobs.

25 We think, regarding a reasonable time to take

1 corrective action that we suggest you allow
2 manufacturers 120 days as a minimum to take corrective
3 action. We would point out that the amount of time for
4 a Manufacturer to rewrite specifications, order,
5 retest, then manufacture, ship, and distribute a
6 product that may be found to be noncompliant, needs a
7 minimum of 120 days. And I was surprised, frankly,
8 upon our evaluation, asking our members for feedback,
9 that they came back with as small a number as 120 days;
10 I would have thought they would have said 180.

11 Handling violations -- ALA recommends that the
12 amount of fine or penalties should be fairly matched to
13 the violation, and I see you talking about that and I
14 was pleased to see it. We find language, though, such
15 as "each day of sale," or "units offered or sold for
16 sale" most concerning and strongly recommend that
17 violations per incident would be a more reasonable
18 approach, and would achieve the CEC's objectives.

19 Some questions and some challenges, we believe,
20 should be raised in finding good answers: Which
21 businesses should be reviewed or checked to see they're
22 selling noncompliant products, the manufacturers, the
23 retailers, or both? Who should be notified if the
24 products are found to be noncompliant? And who should
25 be held accountable? What plan of action would be used

1 to learn and determine when a manufacturer or retailer
2 is in violation of CEC's Regulation? And by the way,
3 emails would not be a good way to notify people, just
4 too many of them today.

5 What actions and steps should the CEC implement
6 when it finds noncompliance? And what methods of
7 communication, again, should be used to ensure that
8 people understand what they need to do? A critical
9 question: How is preexisting inventory going to be
10 treated? There is some stuff that still sits on
11 shelves given the slow economy, that were not covered
12 previously, and it's going to have to be taken into
13 account.

14 A major issue for us because we represent the
15 lighting retailers across the country, in particular in
16 California, is how are you going to draft and insure
17 compliance on Internet or catalog sales? That's the
18 grizzly bear in the room. And I think there are ways
19 that that may be able to be done, and while there are
20 hundreds of Internet sales people, certainly there are
21 a limited number that are significant. And it may well
22 be that monitoring what they do and/or making sure they
23 receive an appropriate communication would help them do
24 the job as well as the manufacturers doing the drop
25 shipping. If they end up being our member

1 manufacturers, we'll help you achieve that end. Then,
2 finally, when do you plan to initiate the enforcement
3 plan? And I understand from staff that's to be at the
4 end of this year as your general target date.

5 In closing, let me say to you that we salute
6 you for taking the action you are. As I said in my
7 beginning statement, it's not fair not to make sure
8 that everybody plays by the same rules. To that end,
9 though, if there are additional things we can do to be
10 helpful to you and making these things come together,
11 we will. We have some local folks who are our members
12 in the area, who are extremely talented and
13 intellectually bright, and we would be pleased to help
14 you be in connection with them and to do that job. But
15 across the board, we found we have been your good
16 partner, we hope, on other issues and work toward that
17 end, and we look forward to continuing to be that
18 partner for you. If you have questions, I would be
19 pleased to respond to them -- now or whenever. Thank
20 you.

21 MR. FAY: Just one question, Mr. Upton. I am
22 Gary Fay, I'm helping the staff. Under Item 4 on page
23 2 of your comments, Handling Violations, you talked
24 about strongly recommending "violations per incident
25 would be a reasonable approach." Could you give us an

1 example of what that would be? I don't quite
2 understand what you mean by the term.

3 MR. UPTON: Well, what I'm saying is what I
4 don't want to see more than what I do want to see. I
5 don't think we want to see -- let's presume somebody
6 has a problem with a product and they've got 15 units
7 of that product on the shelf, and I don't see that as a
8 fine on 15 items, I said; for instance, I think that is
9 one problem and one issue that needs to be resolved.
10 If you were to put a fine up of \$2,500 and somebody has
11 got -- let's keep the math simple -- times ten, you're
12 going to drive people out of business.

13 I don't think your job is to raise money; I
14 don't think your job is to be penalizing people to the
15 point of abusiveness. I think your job is to have a
16 penalty that calls attention to the fact that they need
17 to operate within the framework of what you want to get
18 done. And units of 10 or 15 and/or the number of days,
19 there are entities who find if you've got 10 units on
20 the shelf and they've been there for 100 days, and now
21 you've got 1,000 units of fining? That's
22 inappropriate. And we would just fight like the devil
23 about that. But per occurrence, that's fair and
24 reasonable.

25 I look at what you've done in the past with the

1 letters you put out and I think those have been useful,
2 but you start off with a procedure that says we found
3 -- and I'm aware that most of your findings, I'm
4 guessing, I shouldn't say I know, but I'm guessing most
5 of the problems you've heard about have come from other
6 manufacturers complaining about a manufacturer has not
7 got a compliant product, or a retailer saying there's a
8 guy down the street who is not operating fairly. And
9 those will continue to be there. But to put out a
10 couple of letters to people to warn them first, and
11 that still doesn't get the job done, then to proceed
12 with fines seems to me to be appropriate. Have I
13 responded to your question, at least --

14 MR. FAY: Yes, I think so. And --

15 MR. UPTON: I'm sorry if my writing was
16 confusing.

17 MR. FAY: -- in considering your position on
18 this, I would suggest you look at those factors that
19 the Commission is required to list in any decision, so
20 that if it does go to a decision, an enforcement
21 decision on an action, every single one of those eight
22 factors has to be dealt with in the decision, you know,
23 length of violation, impact on the consumers, etc.

24 So I think those tend to put your concern in
25 context that those factors are all taken into account.

1 MR. UPTON: It sounds like I need to do a lot
2 more research than I've done relative to that issue.
3 And I see your legal counsel wants to say something, so
4 let me be quiet and listen to what he has to say.

5 MR. BECK: Just to -- and Gary is a lawyer,
6 too, and he went to a better law school than I did,
7 he's probably better fit to answer these questions than
8 I am. But just to kind of give you an example, I
9 think, of what Gary is saying in a situation where you
10 have, say, 20 light bulbs, noncompliant light bulbs on
11 a shelf as compared to two noncompliant washing
12 machines or dryers, or something like that, obviously
13 the factors that are in the statute and that we have to
14 consider would be used to come up with a reasonable
15 fine for both of those. Obviously, the amount of
16 energy that's probably being wasted by a noncompliant
17 light bulb is different from the energy that's being
18 wasted in a larger appliance like a washing machine, or
19 a dryer, or something like that.

20 So, for example, it could be -- \$2,500 is only
21 the max -- is the maximum that can be assessed, so in
22 that kind of situation, it might be something where you
23 decide you're going to levy a fine of \$5, \$10, \$100 per
24 light bulb, but for the washing machine it's going to
25 be \$500, so we would try to come up with something that

1 is reasonable considering the product that is on the
2 shelf and, again, the number of violations.

3 And I think that would be taken into
4 consideration, too, if it's a number of small items, I
5 think we would probably still treat each product that's
6 noncompliant as a violation, but use the size, the
7 energy use, the number of items that are on the shelf
8 at any one given location, to come up with something
9 that is appropriate, and is -- that makes sense.

10 MR. UPTON: We tried to say that to you under
11 Item 4 of Handling, we said ALA recommends the amount
12 of fines and penalties be fairly matched to the
13 violation, or the subject matter being -- we're saying
14 the same.

15 MR. BECK: Right.

16 MR. UPTON: But let me come back to you and
17 say, under Prop. 65, there was an issue on lead in
18 Tiffany's, and I had a hard time understanding what the
19 problem was going to be with lead in Tiffany's because
20 I know of no one who ate glass. And the issue was
21 dermal contact with the lamp shade, and the law in
22 California is meant to keep lead out of the water
23 supply. And if somebody touched a lamp in dusting it,
24 or washing the cloth, you'd have a problem. And by the
25 way, that number on how much lead was in the solder was

1 .00045, well, there's lead in everything, so you've got
2 the problem.

3 We had a member who sold three products in
4 California, one was left on the shelf, it was a third
5 party doing the kind of searching for places to earn
6 money, in my opinion, and that company was fined
7 \$15,000 for one portable sitting on the shelf. That's
8 not reasonable. That's just not reasonable at all.

9 And I understand you've got your requirements
10 as staff and/or the Commission to the Legislature on
11 what gets passed, but I'm also aware and have been
12 around for a long time, and I've worked friendly with
13 attorneys, but the people sitting at the table
14 determining what the action is going to be still will
15 make the determination of what's going to take place,
16 no matter what that law says, people's own psyche comes
17 into play.

18 And you absolutely need to be reasonable, as
19 opposed to saying, "How do we burden people? And how
20 do we raise hell, and make sure things get done and, by
21 gosh, we'll fine the devil out of them." That's going
22 to cause a problem. And it's not needed, and that's
23 one of my earlier comments, let's keep the thing in a
24 positive perspective.

25 We're really trying to help California

1 retailers who are abiding by the rules and
2 manufacturers who sell in California who abide by the
3 rules, and those people and the vast majority of our
4 members, and the people in this State aren't going to
5 have a problem, it is something that is somewhere else.

6 But across the board, it needs to be fairly
7 handled because, unfortunately, errors in what gets
8 distributed are going to be found, and I would presume
9 a letter would take care of that, and if that's been
10 your procedure in the past, that's what you'll continue
11 to do for those kinds of things. But along the way,
12 evil things can take place that would end up being what
13 not anybody wants to see happen. And I don't see that
14 happening. People I've dealt with in this Commission
15 have been pretty reasonable across the board. Other
16 questions for me? Thank you.

17 MR. LEAON: Thank you. Next blue card is Clark
18 Linstone, American Lighting Association.

19 MR. LINSTONE: Thank you. I'm Clark Linstone,
20 I'm a Chief Financial Officer of Lamps Plus and
21 Chairman of the Government Affairs Committee of the
22 American Lighting Association. And I'll make my
23 comments very brief because I think Dick covered the
24 vast majority of the issues that we want to address.

25 The one that I really wanted to stress was our

1 concern about non-California, Internet Retailers and
2 Manufacturers. What we're seeing is greater and
3 greater market share going to basically Internet
4 Retailers, in general, whether that be in conjunction
5 with brick and mortar stores within the State of
6 California, or just out of state.

7 Our concern is regarding kind of the challenge
8 that we see in coming up with something that is fair
9 and equitable because of changing product design,
10 maintaining a separate inventory, or including energy
11 efficient light bulbs, adds cost to product. And we're
12 concerned that California retailers may be put at a
13 significant disadvantage should out-of-state
14 competition be given a free pass on selling
15 noncompliant product to California consumers. This
16 would potentially be at a lower cost because they're
17 able to save on not maintaining separate inventories,
18 or including energy efficient light bulbs.

19 And we know that S.B. 484 specifically
20 addresses this in a statement that this would basically
21 represent unfair competition, and dramatically impact
22 the economic viability of legitimate business. We see
23 this as very important because what used to be a small
24 percentage of the market continues to grow year after
25 year, and that's why I think coming up with some

1 creative way, perhaps relative to monitoring, that's
2 what we really think is very important in this area,
3 otherwise we see potential issues happening in the
4 market which would put California -- legitimate
5 California businesses, which are attempting to, you
6 know, meet all the requirements, at a significant
7 disadvantage.

8 So I just wanted to add that comment to Dick's
9 comments because we really see this as a growing issue.
10 Thank you.

11 MR. LEAON: Thank you. Next speaker, Jerry
12 Desmond.

13 MR. DESMOND: Good morning. The podium is the
14 right height this time. Jerry Desmond, Jr. on behalf
15 of the Plumbing Manufacturers International, or PMI,
16 Trade Group International, a trade group that
17 represents the manufacturers of approximately 75
18 percent of the products and fixtures sold in the United
19 States, showerheads, toilets, faucets, those kinds of
20 devices, and showerheads, I mentioned before.

21 And we thought we'd in our presentation -- we
22 haven't presented written comments yet, but plan to do
23 so -- we thought we'd go through the questions raised
24 in the workshop document and provide some initial
25 thoughts to probably help the discussion as it goes

1 forward, and maybe just primarily there's a question of
2 implementation date, you know, whenever you have a law
3 or regulations, the manufacturers that need to comply
4 always have a question as to when is the shoe going to
5 drop in terms of enforcement. And I think I heard
6 before, perhaps it's around December of this year,
7 which is just a little tight sometimes for
8 manufacturing communities to build themselves into a
9 situation of compliance, so I would like to note that
10 upfront.

11 And then, in terms of some of the specific
12 questions, we just have several other questions and it
13 won't take too long to provide some of our answers, but
14 one question is, what is a reasonable period of time to
15 allow a manufacturer to take corrective action?

16 When we looked at our community, the length is
17 important, the longer the better, a 90-day window for
18 our part of the manufacturing community would look like
19 a reasonable timeframe in that regard.

20 Another question, are there additional steps
21 the Commission could include in the process? And we
22 think there are. Third party certification in our
23 industry is prevalent. Entities such as NSF, IAPMO,
24 CSA, and other entities could be considered. In fact,
25 certification in our manufacturing sector is

1 registration of existing products. Manufacturers, we
2 believe, should continue to be allowed to utilize those
3 procedures for compliance such as IAPMO listing of the
4 plumbing products and fixtures.

5 Another question is, are there alternative
6 enforcement models that the Commission could consider?
7 And we believe there are in our sector. For plumbing
8 products, and fixtures and fittings, the existing
9 enforcement structure, which is conformance with the
10 California Plumbing Code and proper third party
11 verification, and certification is a strong guidance
12 document and structure that works very well for our
13 industry and appears to us to be sufficient. We'd like
14 to suggest that the listing by other ANC accredited
15 certifying agencies be used as proof of product
16 compliance and as an alternative to perhaps requiring
17 manufacturers to submit product lists.

18 Another question is, how should the Energy
19 Commission enforcement procedures interact with, or
20 make use of, other enforcement processes? And it's
21 very similar for our sector, it's a similar answer,
22 existing enforcement structure includes conformance
23 with California Plumbing Code, third party verification
24 and certification, as well.

25 Another question is, should the categories of

1 violations -- should there be categories of violations
2 for appliance models that don't meet existing
3 standards? And we note that applicable standards
4 already include testing and marketing requirements for
5 plumbing, fittings, and fixtures.

6 In addition, if there are products which are
7 not certified or tested in our sector and are labeled
8 as such by the manufacturer, and claims of conformance
9 are made, we believe those are false and should be a
10 separate category of violation, again, along the lines
11 of what we're trying to accomplish in terms of, you
12 know, those who try to comply should not be at a
13 disadvantage to those who don't.

14 Another question is, should each day of sale or
15 offer of sale of a non-certified product be a
16 violation? I think that was touched upon earlier. We
17 suggest that the Department of Energy, Federal
18 Department of Energy, regulatory violations be
19 considered if they note severe daily fines for
20 noncompliance. But we do, and many of our members
21 wanted to bring forward, the per incidence issue again
22 that was raised earlier, that this has been suggested
23 by our members as an approach which is fair and more
24 appropriate.

25 Another question is, how will the Commission

1 determine persistence of the violation? We see that as
2 being an issue that's tied to the corrective action
3 within a specified period of time, and that it should
4 be spelled out by the Commission. And that would be
5 helpful to all those who try to comply. And also, it
6 would be helpful if a resolution period is identified
7 with some specificity and enforced.

8 Another question is, should nonpayment of a
9 fine by itself be a violation? And we do believe that
10 fines should be established as part of the corrective
11 action plan, and if there's non-payment, that should be
12 a separate violation.

13 Second to last, should the Commission determine
14 the number of noncompliant models being offered for
15 sale? We believe that would be useful. However, on
16 the other two questions, should the distributor be
17 asked to report such data, and should the Commission
18 start to collect such data, we see those as going a bit
19 too far and a bit onerous, and we wouldn't suggest that
20 those would be the best route.

21 And then, finally, what is a reasonable time to
22 allow for a penalty to be paid? We believe a 90-day
23 period sounds pretty reasonable and would like to
24 suggest that. And we appreciate the opportunity to
25 participate in an informal workshop in this kind of

1 format, and we are available to post for questions, and
2 we will be providing written comments, as well. Thank
3 you.

4 MR. LEAON: All right, thank you.

5 MR. FAY: If I might take a minute. And,
6 Dennis, please back me up because he's been with this
7 program a lot longer than I have, but I just want to
8 emphasize for everybody that S.B. 454 and the
9 regulations that we'll be working on, and that begin
10 with this workshop today, really just add a monetary
11 enforcement tool that the Commission can now use to
12 achieve enforcement, it doesn't put new standards in
13 place, or change any of the enforcement tools that this
14 Commission had before, except that now the Commission
15 can itself impose fines.

16 In the past, all the same standards applied and
17 we could refer it to the Attorney General, or the
18 Courts to impose fines. So that's really the only
19 difference, and I had the sense that you thought we
20 might be about certain standard setting in this, and
21 that's not really what it's about, it's just how to
22 fairly administer this new enforcement tool?

23 MR. DESMOND: Thank you, we appreciate that for
24 the record, too.

25 MR. FAY: Sure.

1 MR. BECK: And that's my understanding, as
2 well.

3 MR. LEAON: Okay, Cheryl English.

4 MS. ENGLISH: Good morning. Thank you for the
5 opportunity to be here today. And I would like to
6 really thank the Commission because I think that this
7 has resulted from a couple of years of discussion about
8 compliance and we're really encouraged to be here at
9 this point with the Commission enabled with a tool to
10 manage the enforcement and the penalties.

11 I'm Cheryl English, I'm with Acuity Brands
12 Lighting and I am a member of the National
13 Manufacturers Association, however, my comments here
14 today are not the official comments of NEMA; NEMA has
15 some draft comments prepared and will be submitting
16 them after this workshop.

17 So, again, I encourage the support for the
18 enforcement of the Title 20 provisions and standards
19 because the ultimate goal, as you guys have always
20 mentioned, is saving energy. And in the past, it has
21 been a leakage within the state, and we are aware of
22 our history of violations where the state is not
23 achieving your energy goals because of the lack of the
24 ability to enforce. So we're here to help the State
25 achieve your energy goals and the California Standards

1 and enforcement is a bit different than Federal, so I
2 think that there's been a lot of confusion in the
3 marketplace. Federal Standards are completely focused
4 on the manufacture of the equipment complying, whereas
5 in California, it is not only the manufacture, but also
6 the sale and offer for sale. We actually think this is
7 going to be more robust in terms of helping you get to
8 the sales because oftentimes, through a complex
9 distribution channel, there are a number of ways for
10 those violations to occur.

11 So in this case, in California, some of those
12 that are impacted and may not currently know that
13 they're impacted through the distribution channel are
14 retailers, distributors in my case for electrical
15 equipment, electrical distributors, contractors, web
16 sales, as well as the manufacturer.

17 So, I have six comments, the first is
18 encouraging and thanking you for that support and the
19 focus of sale and offered for sale. The second comment
20 is that we encourage you to develop a robust process to
21 evaluate any potential violations and to ensure that
22 there is a due process for that evaluation. I believe
23 that the items outlined in S.B. 454 are robust and do
24 provide a detailed area for evaluating the critical
25 issues relative to compliance.

1 The issue, and some have mentioned this before
2 me, in California because of the sale and offer for
3 sale, is that products may meet neighboring state
4 requirements and may be purchased and shipped into
5 California without a manufacturer knowing that, and
6 because a lot of the initial evaluation is related to
7 the manufacture and model, the evaluation of that sales
8 channel is going to be critical in terms of the
9 penalties and violations.

10 Also, many manufacturers have distribution
11 centers in California that service many different
12 states, and it is difficult for us to know where the
13 product ultimate destination is when we sell or ship
14 from those distribution centers. For our products, we
15 kind of have two different channels, we have what we
16 call job sales: a building is being constructed, we are
17 shipping products directly to a job site, we know where
18 it's going, and we can control that, and we do control
19 that. But when we have over-the-counter sales, the
20 distributor type of sales, we may sell to a California-
21 based distributor who may service other states, and so
22 we ultimately do not know the destination of those
23 products.

24 The third point is that we encourage the
25 Commission to ensure, as you develop this, to limit

1 testing and reporting burden. We think the process
2 that is currently in place with the California
3 Appliance Database is sufficient. Manufacturers have
4 to have sufficient testing in order to list in that
5 database, and we believe that is going to be a critical
6 element in one of the first steps of your compliance
7 evaluations.

8 The fourth area addresses your questions with
9 regard to levels of non-compliance and I believe that
10 there are three key areas here, the first is failure to
11 list in the database, the second one is failure to
12 properly label a product, according to the energy
13 standards, and the third one would be a failure to meet
14 the energy performance standard.

15 Within that third one, I think that there's
16 also consideration of violations that are just clearly
17 not meeting a product, never meets it, is not even
18 close to meeting it.

19 There is also the consideration of
20 manufacturing or testing tolerances. I think that your
21 consideration of the severity of violation based on
22 energy impact will likely address that because the
23 manufacturing tolerances, or testing tolerances, are
24 going to result in a very small variation from the
25 energy standard, whereas the clear violations are going

1 to be those larger violations.

2 Of those three, I believe they're listed in
3 order of severity, so the violations to list would be
4 the least severe, and they're also in terms of the
5 timeliness in which they can be corrected, so a
6 violation to list should have a very short period of
7 time to bring that product into compliance, whereas, as
8 you move up in those three, the failure to properly
9 label, is a moderate violation, the performance
10 violations that are clear and egregious are the most
11 severe, but would also require the most time to
12 evaluate the specifics related to that.

13 Also the penalties, I think, are in order, so
14 those violations that are minor as far as listings vs.
15 the performance will be increasing in terms of the
16 severity of those violations.

17 The fifth area is we encourage the Commission
18 through this process to have some measures of
19 communications and education of the marketplace. There
20 is a great deal of confusion within California of who
21 ultimately is responsible for compliance, and I think
22 that information on the Commission website, independent
23 of manufacturers, will be very helpful.

24 I think that manufacturers can use that
25 information to help ensure the compliance, but when we

1 explain the compliance process to our customers, they
2 often don't believe that it's the official position of
3 the Commission.

4 The sixth area has to do with penalties and I
5 think Tovah mentioned this in her earlier presentation,
6 but certainly financial penalties ought to be
7 reasonable and appropriate relative to that violation,
8 but we also encourage, once the violation has gone
9 through the due process and been confirmed, that the
10 publicity aspect for many manufacturers is a more
11 significant violation than the penalties. And both of
12 those should be considered in your evaluation of
13 penalties applied. And that concludes my comments.
14 Thank you.

15 MR. LEAON: Thank you. Next blue card is from
16 Valerie Winn.

17 MS. WINN: Good morning, I'm Valerie Winn with
18 Pacific Gas & Electric Company and today I'm speaking
19 on behalf of PG&E, Southern California Edison Company,
20 Southern California Gas Company, and San Diego Gas &
21 Electric Company.

22 On Wednesday, the Investor-Owned Utilities
23 submitted formal comments, and so I'm not going to
24 repeat all of our points here, but rather just
25 reinforce some of the things that we raised in our

1 comments. The first being that we think the CEC really
2 is the best positioned entity to look at how to enforce
3 compliance with the Appliance Standards. And while the
4 IOUs are not in a position to really act in any
5 enforcement capacity, we do look forward to working
6 with you and other stakeholders to develop an effective
7 compliance regime for California.

8 Some of the ways that we think this rulemaking
9 could be -- needs to be clarified in a few ways so that
10 the parties have absolute understanding of, "Yes, I
11 need to do this," or, "No, I don't need to do this." I
12 mean, for example, you know, which delivery channels
13 and which appliances are going to be subject to these
14 requirements?

15 And I think, you know, there may be a broad
16 understanding of what falls under Title 20, but a
17 little bit more clarity and specificity could probably
18 help manufacturers and other parties who may provide
19 the appliances appropriate notice to get involved and
20 get engaged.

21 The second area is also what is the problem
22 we're trying to fix, and I just heard the last speaker
23 note, you know, there may be three different things,
24 there may be a number of items, but what were the
25 specific circumstances that led to the passage of --

1 what was it -- S.B. 454, and so really focusing as we
2 develop this compliance regime about what is the
3 problem we want to fix here. And part of that is
4 driven by the investor-owned utilities administer the
5 energy enforcement programs, and so we want to be
6 really sure about where are the points that could
7 affect customers' experience with energy efficiency,
8 and we want to make sure that enforcement of the
9 compliance regime doesn't negatively affect their
10 experience, and move them away from wanting to invest
11 in energy efficiency.

12 So I did want to note a few of the things that
13 we really have already been doing to help increase the
14 culture of compliance in California. Certainly, we
15 have all added language to our websites with respect to
16 energy efficiency rebates to raise customer awareness;
17 we've also had more proactive outreach with retailers
18 about the Title 20 Standards because, you know,
19 knowledge and outreach are a really important way to
20 build understanding of what we're trying to accomplish
21 here. And certainly we've been utilizing specific
22 retail channels to try to deliver certain energy
23 efficiency offerings.

24 So, as we move forward, you know, all of these
25 things can help increase the effectiveness and increase

1 a culture of compliance and there are, you know,
2 relatively low cost ways of achieving that.

3 Some of the things that we should think about
4 as we move forward are, what are some of the other
5 certification processes that we should perhaps
6 leverage? Or partnering with other organizations, I
7 mean, what we see in many ways is there are duplicative
8 processes, we see this in renewables permitting, where
9 you have different agencies that are overlapping. And
10 so, thinking about it from a customer perspective, if
11 I'm a customer and I see an *Energy Star* brand, that's
12 kind of a nationally recognized brand; and is there
13 some way that we can streamline the CEC certification
14 process so that *Energy Star* and CEC could be doing
15 certifications in parallel, so that customers can take
16 advantage of that brand knowledge?

17 With respect to timelines to achieve
18 compliance, if someone is found not to be in
19 compliance, you know, many of these more specific
20 issues, as I'm hearing different people talk, may
21 differ depending on the appliance, it might differ for
22 a variety of reasons, and so that's where specificity
23 and looking at the different customer segments, and the
24 delivery channels, I think, can help us shape a
25 compliance and enforcement regime that will work for

1 all of the industries that are affected. And if you
2 have any questions, I'm happy to answer them.

3 MR. LEAON: Thank you. Any questions?

4 MS. WINN: Thank you.

5 MR. LEAON: Thank you. Okay, next blue card,
6 John Green.

7 MR. GREEN: Good morning, thank you for the
8 opportunity to speak to this issue. My name is John
9 Green, I'm with Cooper Lighting and I'm also a member
10 of NEMA, but I'll be speaking to Cooper Lighting's
11 input, even though I think a lot of these issues will
12 be also brought up with NEMA formal comments. I
13 apologize I don't have a business card, but I will get
14 you the information before the end of the meeting.

15 Cheryl English, although a competitor, did a
16 very great job in enumerating the issues that Cooper
17 also feels is important in the bill. And we fully
18 support it. We think this is a great step forward and
19 we'll recoup energy savings that you had projected in
20 the past, but not really have been able to realize for
21 one reason or another.

22 But one item I'd like to emphasize is an issue
23 of manufacturing tolerances on products, and the way
24 the thresholds were set in most of these rulemakings
25 for energy efficiency try to take into account sampling

1 size and issues like that in determining the threshold
2 in how you statistically arrive at those numbers. But
3 there is still a manufacturing tolerance in every
4 product that is manufactured, and I'm sure the
5 Commission is very aware of that.

6 But the manufacturers, most of us test 100
7 percent of our product, but it's only tested for
8 functionality, not for performance. And because of
9 variations in parts that we receive and outside
10 vendors, assembly techniques, there's always
11 differences in products and we would hate to be caught
12 in a position where one or two products is tested and
13 the whole product line is thrown out.

14 We would hope there is some part of the process
15 that would address the ability to perhaps address
16 certain products, or even certain batches that come
17 through, a bad batch that came in from bad parts, and
18 address that in a way that's fair and equitable to
19 everyone, perhaps pulling that particular batch off the
20 shelf is a way to go, but not banning the entire
21 product because of a small mistake.

22 So we would encourage the Commission to make
23 sure to work into the procedure that there is not an
24 undue penalty for such manufacturing tolerances that
25 come about because I think the real issue would be that

1 this could eliminate a product, or drive up the cost of
2 a product to the point where it's actually going to
3 harm the efforts the Commission and the State of
4 California is trying to do to actually save energy.
5 Eliminating a product that actually does conform and
6 for a minor problem does not, for a particular one or
7 two samples, just doesn't make a lot of sense.

8 So, again, we applaud the efforts to enforce
9 these efficiency standards and move ahead, and we're
10 looking forward to providing more input to the
11 Commission on any items that are important and that we
12 can contribute. Thank you.

13 MR. LEAON: All right, thank you. I don't have
14 any more blue cards -- oh, we have one here. Thank
15 you. Okay, Patrick Splitt.

16 MR. SPLITT: I'm sorry I didn't turn it in
17 sooner, but I thought this was going on until after
18 lunch, and I thought if I had to be here for lunch, I'd
19 be a little more mellow, but now it's the coffee
20 talking, so...

21 So my first comment has to do with a previous
22 comment or two that have been made about out-of-state
23 Internet sales, and what to do about that, and I have a
24 suggestion that we have installation certificates where
25 the installer has to certify that he has correctly

1 installed equipment. And we could make it clear on
2 these installation certificates that, in fact, he has
3 only installed equipment that is listed in the
4 directory. And the question I've had is whether or not
5 this proceeding we're working on now could also enable
6 fines to be levied against the installer. It wasn't
7 clear to me whether you can do that, but it wouldn't
8 have to be much of a fine at all on an installer before
9 he would get back to the distributor and, you know,
10 word would get out, and he would be a lot less polite
11 than the Energy Commission would be to that distributor
12 about selling these things, and he's getting fined.
13 And even if there was almost no fine, if he just had
14 the time it would take him to have to replace that
15 equipment and get listed equipment would be a
16 significant cost.

17 So I think, if you could go after the installer
18 in these instances that circumvent the supply chain and
19 order stuff from Internet out-of-state, it wouldn't
20 take long for that to stop. So I don't know if you
21 have authority to do that, but if you do, I would
22 suggest it.

23 And then I'm going to get back to my favorite
24 topic of, before we get carried away with all kinds of
25 new regulations, we ought to make sure what we have now

1 works. And it goes back to my previous question about
2 just what is listed in the directory and what should be
3 listed in the directory, and how do people know.

4 I just this morning got up a little early and
5 looked for a couple pieces of equipment, and here, this
6 is a Takagi tankless water heater -- they're all
7 replacing -- I mean, everybody is putting these in now,
8 it hangs on the wall. And it is listed in the
9 directory, but it's listed under heating products,
10 combination space water heater -- it is not a
11 combination space water heater, it doesn't do spacing
12 at all, it's only a water heater. No one would know to
13 look here. I have no idea why it's in this section, so
14 the directory itself is really messed up, this
15 shouldn't be there.

16 There is another section called "Heating
17 Products Boiler" and there, there is a piece of
18 equipment called a "Triangle Tube Prestige Excellence,"
19 which looks like a wall hung tankless water heater, but
20 actually inside it has two circuits, one for doing
21 space heating as a boiler and it's listed as a boiler,
22 and it has a separate circuit to do domestic water,
23 potable water, and it includes a tank inside the unit.
24 So this clearly does both water heating and space
25 heating, but it's not listed under Heating Products

1 Combination Space Water Heater, it's just listed as a
2 boiler. I mean, you've got to get your act together
3 before you start fining people for not being in the
4 right place because, obviously, you don't know where to
5 put them when they do certify.

6 So here is another list, this is a heat pump
7 water heater, a little thing, a tank with a heat pump
8 that sits right on top of it, and the best one I know
9 of, of the ones I've looked at, is made by Stiebel
10 Eltron. They're not in the directory anywhere. And
11 they're *Energy Star* rated. So -- and this company
12 makes really good products, they also make a very good
13 indirect water heater that has very high insulation,
14 really good, it's not in the directory and it's not
15 even clear that there is a place in the directory for
16 these things, even though they are Federally regulated
17 as far as insulation value. So there's equipment like
18 this that should be in there, and these guys obviously
19 don't know anything about this.

20 Now, when your regulations go into effect,
21 they're going to get hit out of the blue, having not a
22 clue that they're supposed to have -- that there even
23 is an appliance directory. And now you're going to try
24 to fine them. So before you start doing that, you've
25 got to figure out some way of figuring out what

1 equipment it is, and make sure all these manufacturers
2 actually know that they're supposed to be in the
3 directory before the first thing they know is that
4 you're fining them. You've got to do a little research
5 here and figure out, you know, what's supposed to be in
6 the directory and what isn't supposed to be in the
7 directory.

8 My last little example, this here, I don't know
9 if you can see it, but it looks an awful lot like a
10 Daikin Altherma that they've just been spending two
11 years trying to get certified by the Commission. This
12 unit is indeed an air and water heat pump, pretty much
13 identical, does exactly the same stuff, it's been on
14 sale here in California for years, never anybody from
15 the Commission has ever said boo to them about this.
16 It's a system, I think, made in Indonesia or something,
17 but their national headquarters is in California. They
18 sell these all the time. I inspect these out years
19 ago. They have efficiencies in there, I don't know
20 where they got them or what parameters they tested them
21 to, but all people do is plug those efficiencies into
22 the compliance software and if the building official
23 questions it, you pull out this document and, to them,
24 this is considered the listing. And they look in the
25 listing and they see the efficiencies, that's as far as

1 it goes.

2 But, you know, there's probably hundreds of
3 these in the state, these are big units, this is a huge
4 unit. And why isn't anything done about this? And
5 where would it be if it was listed? Would it be in the
6 Appliance Directory? Would it be in Section 112? Does
7 it make a difference? They don't have a waiver; as far
8 as they're concerned, they don't need no stinkin'
9 waiver.

10 So, anyway, there's just a lot of problems and
11 I think you have to clean things up before you start
12 running off and finding people, you know, everyone has
13 got to know if their equipment is supposed to be
14 listed, if so, how, where, what the procedures they --
15 most of these manufacturers don't have a clue.

16 MR. LEAON: All right, thank you. Yes, you
17 raise some practical considerations that we'll
18 definitely look at through this proceeding. And, you
19 know, you can't guarantee that universally we'll be
20 able to resolve all of those types of issues, and
21 certainly manufacturers and retailers also have a
22 responsibility to comply with the law.

23 MS. EALEY: I see a hand raised by Cheryl
24 English. Did you want to amend your comments or --

25 MS. ENGLISH: Yeah, Cheryl English, Acuity

1 Brands. There was just something that just hit me as a
2 result of Pat's comments that I think we'll have to
3 consider, and I've made a note to take this back to
4 NEMA to just discuss it with other lighting
5 manufacturers. But the appliance database in lighting
6 allows for certain products that are not regulated by
7 the standard to be listed in the appliance database,
8 and so we're going to have to be careful if we look at
9 some kind of an installation certification relative to
10 the database because not all products in the database
11 are actually regulated.

12 MS. EALEY: Are you referring to --

13 MS. ENGLISH: The Solid State Lighting, there's
14 a voluntary process for solid state lighting to be
15 listed in the database and the intent, I believe, for
16 that was to help expose the performance information of
17 those products to consumers, but it is not a regulated
18 product.

19 MS. EALEY: Thank you.

20 MR. LEAON: All right, any other comments in
21 the room? Please step up.

22 MR. NICHOLS: My name is Bob Nichols, I'm with
23 the Independent Pool and Spa Service Association. Our
24 basic comment at this time is I want to give you an
25 analogy of pool pumps vs. refrigerators. If I went to

1 Home Depot and there were two refrigerators there, one
2 could go in my house and one could go in my garage; the
3 garage one doesn't have to be certified, it doesn't
4 have to be energy efficient. How many of those do you
5 think are going to end up in the house? In our
6 industry on pool pumps, our distributors are able to
7 have and sell single speed pumps that are non-
8 compliant, but they're supposed to be used for a
9 different reason, and then they sell compliant pumps
10 that are used for filtration systems.

11 Seventy percent of the sales that go across the
12 wholesale counter are a noncompliant pump, made,
13 installed on filtration systems. Those are numbers
14 that I have coerced from people that I really can't
15 substantiate that number right now, but during this
16 process, we should be able to do that.

17 And when we started working on this process in
18 2008, around in there, our biggest fear was that the
19 underground economy was going to come in and undershoot
20 every legitimate retail business in the pool industry,
21 and that's exactly what has happened.

22 With the downturn of the economy, there are
23 many individuals that are not -- what do I want to say
24 -- they are not able to get a job or hold a job, and so
25 they become a pool man, they go to the city, they get a

1 business license that does not require a retail sales
2 permit, nor a DBA, nor does the city require insurance,
3 it's just come in, write your check, we give you the
4 business license, you go to the distributor, and you
5 open an account. You're on COD and you pay sales tax
6 as personal use, which is legitimate. Janitorial
7 services do that kind of thing. But how many pumps are
8 you going to have for your personal use? If you have a
9 pool at home, you might have one, we know of several
10 business licensed people that have sold several hundred
11 pumps in a year, they were noncompliant, two horsepower
12 pumps. The price difference between a two horsepower
13 pump and the new standalone variable speed pumps at
14 wholesale is about \$250 to \$300.

15 Any reasonable rebate program from the IOUs --
16 I just learned that word from Gary Fernstrom -- IOU's,
17 okay, independent something -- any reasonable rebate
18 program can offset that, and we've had conversation to
19 the point that says allow us to have a single speed
20 half horsepower pump, and of a single speed nature, and
21 those are the only two pumps, single speed for swimming
22 pools, that should be sold in California. Everything
23 else is variable speed.

24 The technology today and the pricing today is
25 no place close to where it was in 2008. In 2008, a

1 variable speed pump with a control system was probably
2 \$2,200 to \$2,500 to the consumer; with the standalone
3 variable speed pumps now, maybe \$1,500 to \$1,600, as
4 compared to a single speed two horsepower, which is
5 going to go for about \$1,200 or \$1,300. So we're
6 narrowing that gap, it's workable, but it will never be
7 workable as long as the single speed non-compliant
8 pumps are available. They're going to get sold and
9 they're going to get installed illegally.

10 And the gist of our participation here will be
11 continued to try to convince everyone that that's where
12 we need to go. And I thank you very much for your
13 time, and I'm sorry I didn't fill out a card, but I'll
14 make sure you get my info. Thank you.

15 MR. FAY: Mr. Nichol, just a question. Do you
16 have any recommendations on how the Energy Commission,
17 or anybody, could enforce that so that these low
18 efficiency pumps aren't being installed instead of what
19 should be installed?

20 Mr. NICHOL: Well, you've got to realize, my
21 conversation is with people that believe in the
22 efficiency and our personal belief is that California
23 only needs for pool pumps on single speed two pumps, a
24 half horsepower pump and a three-quarter horsepower
25 pump. We do not need a horse and a half single, we do

1 not need two horse single speeds, primarily now because
2 that price gap has come down. As the manufacturers
3 recoup some of their research money, things like that,
4 the prices are -- they're attractive. You know, with
5 the \$300 rebate program for a variable speed pump, you
6 could just tell California that you're not going to
7 have a two speed single -- I mean, a two horsepower
8 single speed pump available for swimming pools, you
9 don't need it -- with today's engineering, you just
10 don't need it. Did I answer your question? Or did I
11 go off somewhere?

12 MR. FAY: And that's a great idea, but this
13 process is not about the rebates, that's probably up to
14 the PUC and the IOUs, which by the way -- Investor-
15 Owned Utilities, that's what it stands for. Like PG&E.

16 MR. NICHOL: I think the only way this is going
17 to go is that this is something that distribution says
18 only certain people can buy any pump and they're in the
19 field to license contractors and California legitimate
20 retail sales.

21 MR. FAY: Well, what do you think about the
22 comment made earlier that, if you target installers and
23 enforce against them, hold them responsible for
24 installing products that comply with the standards,
25 would that help?

1 MR. NICHOL: How are you going to certify the
2 installer? I'm not --

3 MR. FAY: Not to certify them, but --

4 MR. NICHOL: I heard that comment and I made a
5 note on that --

6 MR. FAY: If you knew of a -- it would probably
7 have to be a large installer, but someone who had been
8 installing hundreds of these noncompliant pumps and
9 enforced against that installer. Do you see that as an
10 effective way at all of getting industry's attention on
11 this kind of thing?

12 MR. NICHOL: In a perfect world, that would
13 probably go pretty well. Some of these people walked
14 up to the wholesale counter and they're demanding cash
15 from their retail client, and they bring cash and, here
16 we are, the receipt is gone, and everybody is happy
17 because they didn't have to pay sales tax and they
18 probably got the better deal on installation than a
19 professional installer would charge them. But when it
20 comes down to the bottom line, yeah, I'm licensed, I'm
21 certified, non-contractor, non-sales tax guy, he can
22 beat me by 40 percent. And I don't have a chance, you
23 know? And that's what the whole thing is, and how it's
24 going to get controlled at distribution, I don't envy
25 your job there. At the end of all this, I still may be

1 crying about the same thing next time around.

2 MR. FAY: Thank you, anyone else?

3 MR. LEAON: So most of these noncompliant
4 pumps, I think I heard you say, were mainly out-of-
5 state sales. Is that correct?

6 MR. NICHOLS: No.

7 MR. LEAON: No, okay.

8 MR. NICHOLS: The noncompliant pumps?

9 MR. LEAON: Yes.

10 MR. NICHOLS: No, they're available for water
11 features, booster pumps, fountains, and that type of
12 thing. And, really, when you look at someone that
13 builds a pool and they build a rock feature, and doing
14 these types of things, the difference between the two
15 horsepower single speed to operate that water feature
16 and a variable speed pump, \$300, you're looking at a
17 \$50,000 investment and somebody is going to complain
18 about \$300? No. Internet sales, though, that's
19 another deal. But we'll talk about that later.

20 MR. LEAON: Okay, thank you. Yes, we have
21 another comment in the room and we do need to get --
22 well, let me ask before we move -- do we have any
23 people on WebEx that have raised their hand and want to
24 -- all right, let's take one more comment in the room
25 and then we're going to go to WebEx.

1 MR. FERNSTROM: Well, my apologies, too, for
2 not filling out a card, and I'll provide the Reporter
3 with the information. I'm Gary Fernstrom from PG&E and
4 I'd like to follow-up on what my good friend, Bob
5 Nichols, has said.

6 The difficulty with enforcement for swimming
7 pool pumps is the regulation is application specific,
8 so when the product is sold at wholesale, at the
9 distributor level, and perhaps even at retail, the
10 vendor at that point does not know whether it's going
11 to be applied to filtration application in swimming
12 pool pumps, or some other purpose like a water feature,
13 or a waterfall, so on.

14 So the ultimate opportunity for achieving
15 compliance comes with the last vendor in the chain, who
16 is the contractor. And as Bob pointed out, this
17 becomes increasingly more difficult if the contractor
18 operates without a business license, without being a
19 licensed contractor in the State of California on a
20 cash-only basis, and so on.

21 However, as is the case with federally
22 regulated air-conditioning equipment, which soon will
23 be differentiated by region with California having a
24 different requirement than some other states in the
25 country, I believe the Energy Commission needs to

1 identify the contractor as the vendor or de facto
2 manufacturer, and compliance needs to be achieved at
3 the contractor level because only that individual knows
4 the product and the application, and that's the pathway
5 to achieving enforcement here. Thank you.

6 MR. LEAON: All right, thank you. Let's go
7 ahead and take some questions from the WebEx.

8 MR. ROSENBERG: Hi. My name is Jodi Rosenberg
9 and I'm with Watermark Designs and I'm also a Board
10 member of the Decorative Plumbing and Hardware
11 Association, however, I will not be speaking on their
12 behalf, I'll be speaking on Watermark's behalf.

13 Watermark Designs is a faucet manufacturer here
14 in the United States, located in Brooklyn, New York,
15 made in America, and has been for over 30 years. We
16 meet all Federal Regulations, however, several years
17 ago we did have a little snafu with something that got
18 tested that was tested in the wrong application, and
19 therefore we were fined, and got the fine reduced and
20 discontinued the item, and settled up with the Federal
21 Government to their standards, and everything was fine.

22 About a month ago, I get a call from one of my
23 customers in California, "Jodi, I just got a call from
24 the State of California Department of Energy, your
25 faucets and showerheads are illegal to sell in the

1 State of California. What do I do?" Well, unbeknownst
2 to me that this was going on because we were never
3 notified by the State of California, apparently that
4 morning that they received their phone calls -- and, by
5 the way, the State went on to our website, got a list
6 of who our dealers were in California, picked up the
7 phone, and called each and every one of them, then
8 followed up those phone calls with emails.

9 We apparently, in New York, got a phone call in
10 the morning asking who the owner was, we gave that
11 information, thank you very much, and that's kind of
12 how we put two and two together, that we were -- I'm
13 going to call it "under attack" from California.

14 We then contacted the person who was doing the
15 phone calls from the Department of Energy in California
16 to find out what we're in violation of, and she said,
17 "Well, a letter went out in the mail to you today."
18 Well, it would have been nice to be notified before our
19 customers and our dealers were notified that there was
20 any issue of us being in violation.

21 After speaking with the lady, the owner of our
22 company spoke with her and found out exactly what we
23 were in violation of, within two days we had forwarded
24 all of our IAPMO documents showing that we were
25 certified on faucets, our testing results from our

1 showerheads, and what we thought was going to get us
2 listed with California.

3 And by the way, in the mean time, we ended up
4 getting a list off of California's website of who is
5 approved; and there's only about six or seven faucet
6 companies/showerhead companies approved, yet there are
7 over 70 or 80 being sold in California as we speak.

8 So after we followed up and sent the
9 information, we were notified that our faucets were now
10 going to be approved and listed on California's
11 website, however, our showerheads, because they were
12 tested by a third party that is recognized, by the way,
13 by the Federal Government, is not recognized by
14 California, so therefore our showerheads would either
15 need to be retested or we're still in violation.

16 Next thing I know, a follow-up email goes out
17 to all of our dealers saying in big bold black print,
18 "Please be advised that all showerhead models and some
19 kitchen faucet models are not certified, and therefore
20 still in violation of California. But as of February
21 29th, Watermark models...", and it lists the models, "...
22 are approved."

23 So when we're talking about steps and
24 procedures how California is going to go about
25 enforcing this, and notifying manufacturers, it doesn't

1 sound like any procedures were actually followed in
2 this case. It sounds to me like we popped up as low
3 hanging fruit on the DOE's website and we were being
4 used as a guinea pig or an example of how to go about
5 following up on this. We were even asked by somebody
6 at the DOE to provide other manufacturers that are not
7 in compliance. Well, it's not our job to rat on our
8 competition. We're not a stool pigeon, we just want
9 what's fair. We, too, want to be in compliance.

10 We've changed our tooling at a great expense.
11 We've paid our dues to the Federal Government for being
12 a past violator, regardless of whether we were or not,
13 but in this particular instance, what's happened is it
14 is putting us at a disadvantage in California vs. our
15 competition because we are being singled out to our
16 customers, even though 90 percent of the products that
17 they actually carry may be in compliance with flow
18 rates and everything, but just are not listed with
19 California. I've spoke to several of these
20 manufacturers; nobody knows that we have to be listed
21 with California.

22 So I guess the point of what I am trying to say
23 here, and it sounds like I'm bitter, and you've got to
24 imagine, for the last month my phone has been lighting
25 up, people are angry at us, they think we've done

1 something wrong to them as a dealer who have made
2 significant investments in our products to carry, sell,
3 make profit, give revenue to the State of California,
4 and we didn't do anything to mislead them. We were
5 unaware of this particular situation.

6 As a manufacturer, we sell to every state. We
7 sell internationally. It is extremely difficult for us
8 to know when a new law, or a new regulation, or a new
9 enforcement is being done. It would be nice if the
10 State worked with us, stick out the olive branch, give
11 us time to comply, which, you know, in three days we
12 had the information to the State of California, it just
13 wasn't as complete as you would have liked, or not by
14 the right testing facility that you guys like, but
15 again, we did what we thought we needed to do to help
16 you out, and a second follow-up email goes out scaring
17 our dealers again.

18 And I don't think this is the purpose, but it
19 does seem like we are being singled out amongst 90
20 other -- 80 other companies that are not listed with
21 the State of California. If you have any questions for
22 me, I'd love to take it. Thank you for letting me get
23 that off my chest.

24 And, you know, we are willing to work with
25 California, we do want to work with California, we just

1 want to be treated as fairly as the next person, or the
2 next company.

3 MR. LEAON: All right, thank you for those
4 comments. I hear your concerns and certainly, through
5 this particular process, we will be looking at all
6 aspects, including the notice requirements. Regarding
7 your particular situation, if you want to have
8 additional follow-up discussion on that, that's
9 something that we should arrange a conference call and
10 do outside of this workshop.

11 MR. ROSENBERG: I appreciate that and if you
12 can -- I believe you have my email address, if you'd
13 like to set up a time to have that conference call, I
14 would love to, I appreciate it. And I guess at that
15 time I can ask a follow-up question like can somebody
16 send out a retraction to our customers so they're not
17 freaking out and ripping out products off the walls?

18 MR. LEAON: That's something we can discuss
19 when we talk.

20 MR. ROSENBERG: Excellent.

21 MR. LEAON: Let me confirm that staff has your
22 contact information.

23 MS. EALEY: Yes, we do.

24 MR. LEAON: All right, thank you. All right,
25 we will follow-up with you.

1 MR. ROSENBERG: Thank you, sir.

2 MR. LEAON: Okay. Any other WebEx comments?

3 MR. JACKSON: Yes, this is Alex Jackson on
4 behalf of the Natural Resources Defense Council. Am I
5 coming through okay?

6 MS. EALEY: Yes, you are, sir.

7 MR. JACKSON: Great. So we just have one brief
8 comment today, but we will certainly be filing written
9 comments in response to the questions posed in more
10 detail and we'll be participating fully in the
11 rulemaking.

12 As one of the co-sponsors of S.B. 454, we're
13 incredibly supportive of the Energy Commission's
14 efforts here, and I think we've heard really helpful
15 collective support from all of the parties, including
16 regulated industry today, on the need to really ensure
17 that the Title 24 Efficiency Standards California
18 adopts are enforced sufficiently so that the energy
19 savings we count on from those standards materialize
20 and that we can assure the compliant actors are
21 receiving their fair benefit and that everyone is
22 playing by the rules.

23 I think today we just want to respond to some
24 of the issues discussed earlier related to the Energy
25 Commission's authority to tailor Administrative

1 Penalties, and I think what we need to keep in mind is
2 that, in our view, the Commission needs the requisite
3 flexibility and authority to tailor Administrative
4 Penalty amounts sufficient to deter noncompliance. And
5 I think clarity there is going to be paramount, and
6 with the mitigating factors clearly spelled out in the
7 statute, and what we've already heard from staff, you
8 know, no one is interested in unreasonable or
9 excessively punitive fines, but we have to make sure
10 that we don't preclude ourselves, or that the
11 Commission preclude itself from enabling a fine that's
12 actually going to make sure we do achieve the
13 objectives of this proceeding.

14 So I think, in that sense, we can, you know,
15 not need to concern ourselves too much if, on the face
16 of the Regulations, you know, the maximum amount would
17 seem to everyone excessive when, in fact, that would
18 not be the route the Commission would go, and which
19 anyone, including NRDC, would be in support of. So we
20 will be filing comments more specifically on that point
21 and all the other questions, again, and we look forward
22 to participating in the rulemaking. But thanks for
23 staff for this initial workshop and, again, for your
24 efforts implementing S.B. 454.

25 MR. LEAON: All right, thank you. Other

1 questions? All right, let's keep going. No more
2 questions from WebEx? Hello? Name again? Dianda?
3 Yanda, okay. Yanda Zhang, are you --

4 MR. ZHANG: Yes, can you hear me?

5 MR. LEAON: Yes.

6 MR. ZHANG: Okay, yeah. This is Yanda Zhang
7 with Heschong Mahone Group. Maybe two comments. One
8 is a little bit of follow on, as earlier mentioned, it
9 seems to raise a lot of issue about equipment
10 efficiency, for example, cannot find in the database --
11 Title 20 database.

12 On the other side, on the Title 24 side, you
13 know, there was a lot of reference to the Title 20
14 Standards and to specify minimal efficiency for
15 Building Standards. And as we, working with a lot of
16 people working for utilities, efficiency programs, for
17 example, multi-family programs, HERS Raters, there's
18 often chances that people find equipment in stores are
19 used for program purpose, but cannot be verified from
20 the database.

21 So there's quite some work in terms of getting
22 the efficiency ratings, for example, from
23 manufacturers' own spec sheets. Sometimes, you know,
24 my personal experience, wrong numbers, wrong
25 specifications being used, and it seems to me there is

1 a need to improve the database, Title 20 database, and
2 also maybe I think be more useful such that, you know,
3 we potentially only allow appliances listing the Title
4 20 databases that can be used for Title 24 compliance
5 purposes.

6 So it's probably going to take some time, and I
7 earlier heard some manufacturers say they're not even
8 aware of that, but I think as we go and take this step,
9 and people will be aware of that, I think the majority
10 of people know that, but so with doing that, I think,
11 definitely it's going to streamline the compliance
12 process. That's one of my comments.

13 The second one I would have is that, it's more
14 a question, are we considering any additional or
15 improved labeling requirements in Title 20? For
16 example, you know, to make it a more clear product, or
17 in compliance with California requirements? I think
18 that might make all the distributors easier to
19 identify, you know, which product goes where, and also
20 make the State easier to check.

21 MR. LEAON: Are you thinking specifically in
22 regard to pumps in regard to the labeling question? Or
23 more broadly?

24 MR. ZHANG: Not just pumps. It's more broadly.
25 It was something I was thinking, that, and maybe

1 potentially it may depend on the type of products and
2 I'm not so sure I can come up with a example, I'm not
3 so sure, like a vending -- well, vending machine we
4 have Federal Standards now. But I'm beginning to think
5 about the products, those products that have more
6 stringent or only California Title 20 requirements, but
7 not necessarily required on the Federal side, they
8 maybe can make it more clear that for those you need to
9 have a separate label.

10 MR. LEAON: Right. And Standards we recently
11 adopted for televisions and battery charger systems, we
12 did include marking requirements. We are opening
13 another proceeding to develop standards for, oh, some
14 20 plus appliances, including consumer electronics,
15 lighting, updates of pool and spa pump standards, so
16 there will be an opportunity for us to look at labeling
17 requirements through that proceeding.

18 MR. ZHANG: Okay. Thanks for that. My
19 comments are more general. I probably should pay more
20 attention to the latest -- that's all I have. Thanks.

21 MS. EALEY: Thank you.

22 MR. LEAON: All right, thank you. Do you have
23 a question specific to --

24 MR. SPLITT: To what he was just saying.

25 MR. LEAON: All right, we have a follow-up to

1 the comments that we just had.

2 MR. SPLITT: I'd just like to give an example
3 of this labeling problem between the Appliance
4 Directory. There is a requirement in Title 24 for
5 residential water heaters and indirect storage tanks
6 that there be a certain R-Value and that R-Value be on
7 a label placed on the unit, that's Title 24. There are
8 also requirements in Title 20, and like I mentioned
9 before, a lot of people have no idea that they have any
10 requirements that they have to meet at all from the
11 Energy Commission. And I suggested that, well, we've
12 got to get them informed about Title 20, but there
13 should be one point of contact.

14 They shouldn't finally figure out that they
15 have to talk to somebody in Appliance Standards Section
16 to find out some of the requirements of their
17 equipment, and then find out later that, oh, well,
18 actually there are other requirements in Title 24 that
19 we don't know anything about, so tough luck, figure it
20 out yourself.

21 If you're trying to get these people to comply,
22 they're already going to be really upset with all the
23 hoops you're going to make them jump through for the
24 appliance requirements, and then to have them later on
25 discover that there's a whole other bunch. You can't

1 keep this separation between the two. If there are
2 requirements on some equipment, there's got to be one
3 place these people can go and find out everything they
4 have to do.

5 MS. EALEY: Thank you.

6 MR. ZHANG: Pat? Can I make an additional
7 comment here?

8 MR. LEAON: Yes, go ahead.

9 MR. ZHANG: Pat, I think I definitely agree
10 with you. To enhance your suggestion, maybe I can
11 explain the process of on the Title 24 side, the
12 Building Compliance side, and it's usually most of the
13 buildings are following what we call compliance or
14 performance method, which they usually have to submit
15 -- not submit, but they have to basically do a building
16 performance -- they have to go through the compliance
17 software to specify the equipment, insulation, and all
18 the detailed building specs to see if the building is
19 in compliance or not. The compliance software usually
20 covers less of equipment that are kind of embedded into
21 the software, that you can check which one you're going
22 to use.

23 I think this is a good opportunity here, you
24 know, that we combine the database with the list of
25 equipment included in this compliance software. For

1 example, are you going to select a system -- you need
2 to have a storage tank, and then you need to specify
3 what tank to use, I mean, here we go, if the list is
4 from the Title 20 database, they're linked so that
5 everyone's job is easier because it's just one step to
6 check everything.

7 MR. LEAON: Okay, thank you. Okay, we have one
8 more comment from WebEx.

9 MR. DESBOROUGH: Yes, this is Frederick
10 Desborough calling from California Faucets. We're
11 located in Huntington Beach, Southern California. I
12 have a few questions pertaining to the CEC relating to
13 performance, specifically resonating from Jodi
14 Rosenberg's comments, but would like to take that just
15 a little bit further.

16 When looking at the standards which are
17 referenced today for the particular flow rate
18 performances for showerheads and showers, laboratory
19 faucets, etc., referencing the ASME 112 181M-1996,
20 which is a Federal applied standard, but we're talking
21 here specifically relating to California. Am I correct
22 in that assumption?

23 MS. EALEY: I believe so. You're talking about
24 the -- yes, that's correct.

25 MR. DESBOROUGH: Yeah. Looking at the page 115

1 where we look at the Section 8 for plumbing and
2 fittings, and it references those standards which I
3 just commented on, and how does this apply if we have
4 other standards which are applicable specifically for
5 California, such as the CALGreen Code, where there are
6 lower flow rate requirements being stipulated by a
7 local code for California, as opposed to a Federally
8 mandated Code for the rest of the United States?

9 MS. EALEY: You're asking if there are any --
10 as to the conflict between the two Codes that we must
11 comply with?

12 MR. DESBOROUGH: Basically, yeah. Yes,
13 correct.

14 MS. EALEY: Okay. With Title 20, specifically,
15 we're regulating what can be sold or offered for sale
16 in the state. With Title 24, what is being regulated,
17 to my knowledge, is what can be installed in new
18 construction or commercial or residential construction.
19 If you are selling faucets and showerheads that are
20 federally regulated, we have to use whatever test
21 method the Feds are requiring, we can't have anything
22 stricter. We incorporate those test methods into Title
23 20, and that's what you test against.

24 And so, when you're certifying your faucets and
25 showerheads to us, that's the kind of data you'll be

1 reporting. As to the Building Codes, I am not
2 qualified to speak on that. Is your question whether
3 or not the fines, the Administrative Penalties that
4 we'll be imposing, will have to duke it out between
5 Title 20 and other Codes?

6 MR. DESBOROUGH: Well, the way I understand
7 that the CALGreen Code, or the Title 20 or 24, the
8 differences, when we look at new construction vs. let's
9 say upgrades, renovations, modernizations, when
10 somebody decides that they want to buy a new showerhead
11 or shower because the other one is no longer working
12 satisfactorily, I understand that aspect.

13 One of the things in reading the documents,
14 that it says when there are two standards -- and this
15 may not apply to all particular products in the
16 plumbing fixtures or fittings side -- but it is a
17 little bit confusing, the language is a little bit
18 confusing because it says that you have to comply with
19 all of the standards, and if that were the case, then
20 it makes it a little bit confusing for us as the
21 manufacturers to know what are we going to be held
22 accountable for.

23 MS. EALEY: Okay, we are still listening and
24 thinking.

25 MR. DESBOROUGH: Yes, okay. One of the other

1 things I wanted to just ask as a side question is that,
2 since we're dealing with a standard that basically
3 comes from 1996, the 112181M, 1996, is this going to
4 change moving forward and, if so, as Jodi Rosenberg
5 commented, the industry is unfortunately and very sadly
6 taken by surprise when these things are brought into
7 the public arena, and we as stakeholders in this
8 industry, employers of people, whether it's in the
9 United States or California, we would like to be able
10 to be made aware of these which are going on, so that
11 we can, indeed, comply.

12 And most of the people in this country -- I
13 can't speak for them more personally -- I am sure that
14 they all comply with these regulations, but we would
15 like more dialogue, an open door policy to be able to
16 communicate with each other, so that we don't end up
17 being pounced upon, as Jodi was explaining.

18 MR. LEAON: Okay, we will certainly take that
19 into consideration. I'm gratified that you are
20 participating today, so --

21 MR. DESBOROUGH: Yes.

22 MR. LEAON: So I'm glad --

23 MR. DESBOROUGH: It is a very important issue,
24 I mean, everybody knows that we want to conserve water
25 and energy, and we want to be here and be responsible

1 for that. I personally have been involved with Codes
2 and Standards over the years from overseas
3 manufacturers here in the United States, and I think
4 that people want to participate and comply, and be
5 involved in these things.

6 MR. LEAON: Okay, and the concern I'm hearing
7 is that perhaps there are entities that should be
8 participating that are not currently participating.

9 MR. DESBOROUGH: Potentially, yes.

10 MR. LEAON: Okay, all right. We'll certainly
11 look at that and we may be following up with those
12 comments today to see how we can get those entities
13 involved, certainly, in this process going forward and
14 also on our other rulemaking that we'll be starting to
15 develop new standards.

16 MR. DESBOROUGH: Okay. Thank you very much for
17 the opportunity.

18 MR. LEAON: I did want to clarify one question.

19 MR. DESBOROUGH: Okay.

20 MR. LEAON: Was your concern on the plumbing
21 fixtures -- I just want to clarify -- was that in
22 regard to the standards for differences in flow rates
23 between a building standard vs. the Title 20 standard?

24 MR. DESBOROUGH: Correct, yes.

25 MR. LEAON: Okay. And that's something that we

1 might be able to address through our other proceeding.
2 We do have faucets included as a topic that we're going
3 to explore new standards for, and I think that might be
4 an opportunity for us to look at conforming some of the
5 Building Code Standards with the Title 20 Standard.

6 MR. DESBOROUGH: Yeah. Okay, I thank you very
7 much for the opportunity to speak.

8 MR. LEAON: All right, thank you. Any other
9 WebEx questions? All right, we're going to go ahead
10 and open the phone lines, so if you want to ask a
11 question, please unmute your phone and we'll take
12 questions from the phone. All right, the phone lines
13 are wide open. Any questions on the telephone?

14 All right, okay. We hear some activity over
15 the phone line, but no questions. Let me ask in the
16 room, any additional comments or questions in the room?
17 Yes, please.

18 MR. NICHOLS: -- for your question there on
19 certifying the installers. PG&E has a program through
20 their rebates, and I know rebates are not part of the
21 CEC, but PG&E has a program where an installer has to
22 attend the educational class. Originally, Edison
23 Company had a certification process through Pentair
24 Manufacturing on variable speed pumps. You had to
25 attend the class, get a certification, register with

1 Edison, and when you installed the pump, you got the
2 installer incentives back. Those are the only ones
3 that I know of, I guess, probably through the rest of
4 this proceeding, maybe there's some more.

5 The other point that I forgot to bring up was
6 manufactured replacement motors; in 2008, there were no
7 replacement motors of variable speed, they were two
8 speeds, and as time come on, we find out that two
9 speeds really don't give us the bang for our buck that
10 we want, they give you some, but they don't give you
11 really enough. Now there are manufacturers that
12 produce DC motors that are variable speed strictly for
13 replacement and they're priced pretty good, you know,
14 wholesale may be around \$500 or \$600, something like
15 that.

16 And there is another company that has a control
17 feature that, based on parameters that you set,
18 temperature, filter pressure type things that can
19 actually cut you back by 30 percent in usage, they just
20 reduced the time of the pump running. It's a pretty
21 unique thing, I think they have some of that with
22 refrigerators in households, too, where no one is home,
23 the air-conditioning doesn't run. And somehow there's
24 a sensor that knows that the dog is in the house, so I
25 don't know how those really work, but it's a pretty

1 good deal. So we have to have something for the
2 manufacturer replacement motors to come in on this with
3 us. And that's it.

4 MR. LEAON: Yes. Another comment in the room.

5 MR. SPLITT: The coffee is still working. This
6 is Pat Splitt from APP-TECH. Just two things, one, a
7 clarification of the comment before about different
8 Codes. I'm not even sure what the showerhead and
9 faucet floor requirements are in the Appliance
10 Standards, but I am aware of the CALGreen Code, which
11 has reduced the Plumbing Code requirements
12 significantly. And, again, getting back to my point of
13 one contact, if you can finally get somebody, a
14 manufacturer, to talk to you, they should be able to
15 find out everything they have to do for California from
16 one person.

17 You know, don't tell me, you know, if there is
18 a requirement that everybody knows about and it's in
19 conflict -- hopefully, it wouldn't be in conflict --
20 that you'd make your Codes the same so there wouldn't
21 be a problem, but if it is, you know, you've got to let
22 them know at least that they have to call this other
23 guy up.

24 And along that same line, the CALGreen Code is
25 being amended July 1st of this year, so they're

1 tightening things up again. And I haven't paid much
2 attention to it, except for one little outdoor lighting
3 piece that I actually sponsored, so that I know about,
4 but I haven't looked at the other stuff yet. So they
5 may be tightening down some more, so, you know, check
6 that out.

7 And just one other comment, I worked a lot in
8 hydronics and, along with the comments here about pump
9 efficiencies, in Europe, they're way ahead of us in
10 efficient pumps, and they're cranking down more and
11 more on pump requirements. And what happens is, once
12 the efficiencies go up over there, the stuff that they
13 can't sell in Europe anymore is what gets sent to the
14 U.S. And so we're always using their garbage.

15 And the Commission hasn't done anything at all
16 in so far as trying to increase pump efficiency
17 requirements, and there are a lot of much more
18 efficient pumps available now, especially by 2014,
19 there will be a lot of them, and I know it's not this
20 group's purview, but it's something that somebody
21 should look at.

22 MR. FAY: And you're referring to swimming pool
23 pumps?

24 MR. SPLITT: All pumps -- hydronics pumps,
25 circulating pumps, all pumps.

1 MR. LEAON: Any other questions, comments in
2 the room? On the phone? WebEx? Okay, any comments or
3 questions from the dais?

4 COMMISSIONER DOUGLAS: Thank you, at this point
5 I don't have any questions. I appreciate hearing from
6 the industry stakeholders, members of the public here.
7 It's been valuable for me to listen to this and I'm
8 sure valuable for staff, as well. So I'll hand this
9 back to you to close down the workshop.

10 MR. LEAON: Thank you very much, Commissioner.
11 And echoing Commissioner Douglas' remarks, this has
12 been very valuable for us today to hear your comments
13 and concerns. I think it's really helped us to hone in
14 on really key issues that we're going to need to
15 consider in developing the proposed regulations,
16 including issues about maintaining a level playing
17 field; I think that's really important, and we've heard
18 that there are some challenges around that.

19 Also, in regard to notice and outreach and the
20 importance of doing a better job, and outreaching to
21 manufacturers and retailers to make sure that they're
22 aware of the law, and to make sure that they're taking
23 steps to come into compliance.

24 Also concerns about having an opportunity to
25 come into compliance before a fine is imposed, and

1 ensuring that any fines that we do impose are
2 commensurate with the violation.

3 We also heard some comments on some challenges
4 with the Title 20 database, itself, that's something
5 that we are working on, we're completing a feasibility
6 study right now on modernizing the Appliance Database,
7 and we hope to transition to electronic certification,
8 which I think will be a step forward for both
9 manufacturers and staff, as well.

10 We also heard some concerns about Title 24 and
11 Title 20 conformance and, finally, concerns about how
12 the enforcement strategy is going to address the
13 various delivery channels for products into the state.

14 So that was really important for us to hear
15 those issues and we will be looking at those issues
16 carefully as we go forward in developing a proposal,
17 and I'm sure we'll be outreaching, or contacting you
18 with follow-up questions, and certainly want to keep
19 stakeholders engaged in this process. And I thank you
20 for your participation today.

21 And next steps in the process, oh, post-
22 workshop comments, thank you, post-workshop comments
23 are due by April 30th, so please follow-up with written
24 comments to the docket and we will take those kind of
25 comments into consideration, along with your testimony

1 today. Unless there is any questions on process and
2 next steps, we'll conclude the workshop. Any further
3 questions or comments?

4 All right, again, thank you for your
5 participation and the workshop is adjourned.

6 (Adjourned at 12:18 p.m.)

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