

STATE OF CALIFORNIA - THE RESOURCES AGENCY
BEFORE THE
CALIFORNIA ENERGY COMMISSION (CEC)

<p>California Energy Commission</p> <p>DOCKETED</p> <p>12-HERS-01</p>
<p>TN # 2941</p> <p>APR. 12 2013</p>

In the matter of,)
) Docket No. 12-HERS-1
))
Regulation of Home Energy)
Rating Programs for Residential)
Dwellings)

**Informational Proceeding
to Improve the HERS Program**

California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, California

Wednesday, March 6, 2013
9:00 A.M.

Reported by:
Peter Petty

APPEARANCES

COMMISSIONERS

Andrew McAllister, Lead Commissioner for Efficiency Matters

Hazel Miranda, His Advisor

Pat Saxton, His Advisor

Karen Douglas

Jennifer Nelson, Her Advisor

STAFF

Pedro Gomez, Office Manager, Building Standards Implementation Office

Jim Holland

Pippin Brehler, Senior Counsel

Blake Roberts, Assistant Public Adviser

Also Present (* Via WebEx)

Stakeholders

*Don Charles, USERA

David Meyers, CHEERS

Jay Lenzmeier, CHEERS

Michael Hodgson, CHEERS

Michael Bachand, CalcERTS, Inc.

Charlie Bachand, CalcERTS, Inc.

*Greg Davis

APPEARANCES (CONT.)

Public Comment

Allen Amaro, Amaro Construction Services, Inc.

John Flores, Valley Duct Testing

Tommy Young, E3 NorCal

Eric Beriault, EnerGuy

Bill Lilly, California Living & Energy

George Nesbitt, Environmental Design Build

Brian Selby, Benningfield Group, Inc.

Dave Hegarty, DuctTesters

Ralph Coleman, Western Air Systems Certification

Dave Gwiazdon, Energy Conservation Pros

Paulette McGhie, Energy Inspectors

*Will Chandler, ecoProach

Matthew Christie, Heschong Mahone Group

Don Soto, Soto Consulting Group

Ralph Coleman

Jacki Donner

Erik Emblem, Joint Committee on Energy Environmental
Policy

Andy Wall, AC Home Performance

Eric Taylor, Enalasy Corporation

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P R O C E E D I N G S

1

2 MARCH 6, 2013

9:00 A.M.

3

4 MR. GOMEZ: My name is Pedro Gomez. I'm the
Manager of the Building Standards Implementation Office.

5 I want to welcome you and thank you for coming to

6 today's event, workshop.

7

8 I want to let you know that today's proceeding
is related, directly related to a ruling that the
9 Commission made in June of 2012, in regards to a
10 complaint against CalcERTS.

11

12 So, what's going on today is directly a side
effect of that ruling.

13

14 Today's event will address five separate topic.
Each topic will allow separate groups to provide input.
15 The five topics that we'll be addressing are Provider
16 Quality Assurance Programs, HERS Rater Disciplinary
17 Process, HERS Rater Companies, Conflicts of Interest,
18 Permissible HERS Provider Certification Categories.

19

20 On each topic you will be invited to respond to
questions. To facilitate a more productive process we
21 ask that stakeholder groups, such as providers, raters,
22 contractors, et cetera, work together to respond to each
23 question.

24

25 To help with the process, the Presiding
Commissioner will call for specific groups to come

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1 forward and speak.

2 Every stakeholder group is encouraged to
3 participate. We ask that when it is your turn to speak
4 that you follow the three-minute rule and that you not
5 repeat what someone before you has already stated.

6 If you agree with the statement of a previous
7 presenter, please say so. If you disagree, we encourage
8 you to elaborate.

9 For anyone on WebEx during this proceeding if
10 you would like to make a comment, please raise your hand
11 and our WebEx personnel will address you.

12 During today's proceeding the Commissioner may
13 ask you to return to the podium to respond to additional
14 questions or concerns.

15 With that said, I'd like to invite our Public
16 Adviser, Blake Roberts, to come in and speak for a
17 moment.

18 MR. ROBERTS: Hello, my name is Blake Roberts.
19 I'm the Assistant Public Adviser.

20 And just to give you some idea of what the
21 Public Adviser's Office does is that we assist the
22 public with questions that they have about the process
23 at the Energy Commission, how things work, and provide
24 some -- as the name of our office implies, we provide
25 some advice as far as how to proceed and how to

1 participate.

2 So, I really invite you that if you have any
3 questions, if you need some guidance as far as how to be
4 involved, please let our office know. We are -- in the
5 notice there is contact information for the Public
6 Adviser's Office, but I'll just briefly mention it's
7 Public Adviser. If you go to our e-mail address it's
8 Publicadviser, that's Adviser with an "e",
9 @energy.ca.gov.

10 So, I'd sure invite you to contact us if you
11 have any questions. We're also located -- if you go up
12 to the second floor, face the little snack shop that we
13 have, our office is on the left. So, please let me know
14 if you have any questions. Thank you.

15 MR. GOMEZ: Thank you, Blake.

16 Just for some basic stuff, first of all, the
17 facilities, if anyone needs to use the rest room, are
18 out the main doors as you came in, the bathrooms are to
19 the left.

20 I'm not sure if there's still a water fountain
21 there, but if you need water, if the water fountain's no
22 longer there, we have a snack bar on the second floor.

23 I do not think you need to check in with
24 security to go up to the snack bar. But as you go up
25 the main stairs you'll see it right in front of you.

1 In the case of fire, the Commission has a
2 process for people marching out. There's a field caddy
3 corner to the building, if you'd please just make your
4 way in that direction.

5 One change to the agenda today, the last two
6 items or topics that will be discussed are going to be
7 flipped. So, the last item currently is Permissible
8 HERS Provider Certification Categories. That's going to
9 move from last to move up one, and the fourth item's
10 going to move down to the last.

11 With that said, we want to then thank you so
12 much for coming and participating.

13 And I'd like to turn it over to Commissioner
14 McAllister.

15 COMMISSIONER MC ALLISTER: Hey, everybody, thank
16 you for coming. I'm really looking forward to the
17 discussion today.

18 The reason we flipped the last two, just FYI,
19 but I have to be at the Assembly at two o'clock, so I'm
20 hoping to be able to wrap up the items that I can
21 provide some more help on and then the more legalistic
22 one Commissioner Douglas can wrap up, if it's still
23 going on. Being the lawyer in the bunch, that's more
24 her area that she be here for that, and not so necessary
25 that I be here.

1 I want to introduce, first of all, who we've got
2 here on the dais. Jennifer Nelson, to my right, Advisor
3 to Commissioner Douglas, who will be with us in a little
4 bit.

5 Hazel Miranda, who's my Advisor. And
6 congratulations on getting through half of your first
7 week with my awful schedule. Pat Saxton will be here at
8 some point, as well, my other Advisor.

9 Let's see, I wanted to really thank staff, first
10 of all, for putting this together. I think, obviously,
11 these workshops are no mean feat to put together.

12 But I also want to thank you all for coming. I
13 know it's not easy for you to get to Sacramento. I'm
14 noticing, happily, that there are lots of people online
15 here who want to participate, as well, which is
16 fantastic. The web resource really enables us to
17 involve a lot more of the public stakeholders and,
18 hopefully, it will be less burdensome on them.

19 So, as Pedro mentioned, the reason for this OII
20 originally came out of the complaint process. We've
21 added a couple of topics having to do -- topics four and
22 five having to do with, really, the positive development
23 of a new and potential future providers coming on board.
24 So, I see the sort of competitive environment in this as
25 a very positive development. And, certainly, should

1 inform and sort of contextualize what we're talking
2 about here today.

3 As far as a process, you know, it seemed like a
4 good idea at the time for me to kind of help manage the
5 proceedings and we'll see if it turns out that way.

6 But the goal here is to have it be both
7 manageable, everybody should be able to get their say,
8 but manageable in terms of process of flow, but also
9 that everyone get their say.

10 So, I want it to be as conversational as
11 possible within some necessary structure to make it all
12 manageable.

13 So, we may end up on specific topics with a few
14 people around the tables there, with microphones to sort
15 of have a more back and forth. I don't want to be a
16 bottleneck or a stage manager here. I just want to kind
17 of make sure that we balance the different needs of this
18 relatively formal process.

19 So, just keep that in mind and I definitely want
20 to have people raise their hands in responding, that's
21 really critical for them to do.

22 We really need a HERS Program structure. We
23 need it to function well. We need it for compliance.
24 We need it for quality in our newly constructed and
25 alternations environment. And all the stakeholders here

1 are really critically for making that happen.

2 The constraints that we operate in here are as
3 we -- I'm sure people will have something to say,
4 particularly our legal counsel here is right there. But
5 at some point today, I'm sure, they'll have something to
6 say to clarify some of these issues.

7 But the ruling that we made on the complaint
8 that lead into this process today was very clear that
9 the Energy Commission is not -- that the providers are
10 not State actors. The Energy Commission is not actively
11 and daily managing this marketplace. We set the
12 guidelines, we set the rules and sort of, you know, the
13 actors in the marketplace go out and, hopefully,
14 prosper.

15 So, in a way it really becomes the priority, the
16 number one priority on getting the rules right. So, the
17 rules process is really what we're trying to inform
18 here. It's very likely and it's probably that we will
19 have a proceeding that will develop some changes to the
20 rules that apply to the HERS process that will come out
21 of this workshop and your comments.

22 And so the discussion that we're having here is
23 really important for making sure we're getting it right
24 and for good designing, setting in stone some rules, but
25 that you all can go out there and prosper and this

1 marketplace can work.

2 So, as you all know, probably better than I do
3 for sure, it has to function in the real world, in the
4 marketplace. Right? And so it needs to be cost-
5 effective so the customer can use it, ensure quality,
6 the QA needs to get done. And these were some of the
7 issues that came up in the complaint process.

8 And so, we really felt that it was necessary to
9 look -- sort of lift up, you know, open the kimono a
10 little bit here and start to understand the marketplace
11 a little bit better, figure out how the rules might need
12 to be changed, encourage greater participate to ensure
13 quality control. At the same time making sure it's fair
14 and, hopefully, not so onerous sort of cost-wise to make
15 sure that it can actually work.

16 So, I feel like we have a lot of different
17 constraints here that we're trying to operate under and,
18 hopefully, we can have our cake, eat that cake, and move
19 on.

20 So, that's what we're hoping to accomplish today
21 is to begin that process.

22 And I really want to thank you, again, for your
23 efforts in this space and for coming today.

24 I am not going to take a half an hour here so,
25 hopefully, we can push the agenda forward.

1 And so, I'll pass it back to Pedro to get us
2 started, thank you very much.

3 MR. GOMEZ: Well, Commissioner, we're going to
4 move on to the first topic. And the first topic for
5 discussion is Provider Quality Assurance Program.

6 There are a number of questions that we have
7 posted and ask you to consider. We posted these
8 questions about two weeks ago, asked you to look these
9 over and to formulate some responses that you'd like to
10 now share with us.

11 The first question, "How do the QA requirements
12 impact the Providers business model?"

13 And, Commissioner, do you want to go through one
14 question at a time or do you want to go through the
15 series of questions?

16 COMMISSIONER MC ALLISTER: I'm sorry, in
17 order -- I don't want to have the process be too
18 onerous, so I'd kind of like to have people get up and
19 talk and sort of speak on this topic, generally. And
20 then if there's more to say, we can have then subsequent
21 dialogue as we work through the questions.

22 So, I think it's good to get everybody sort of
23 having a first bite at the apple and then we can go back
24 and have dialogue on individual topics.

25 MR. GOMEZ: Okay, so maybe should we invite --

1 let's start with the providers, maybe come up forward to
2 the table and prepare to discuss these topics. So,
3 CalCERTS, CHEERS.

4 MR. BREHLER: And just to clarify, this is
5 Pippin Brehler, Staff Counsel, all of these mics are on
6 and all of these chairs are available. Please don't
7 limit yourself to just the podium. Thank you.

8 MR. GOMEZ: Don Charles, are you online?

9 MR. CHARLES: Yes, I am.

10 MR. GOMEZ: Okay, so Don Charles represents
11 USERA, one of the PDPPA providerships.

12 COMMISSIONER MC ALLISTER: How should we
13 proceed? I guess start on my left, your right.

14 MR. CHARLIE BACHAND: Good morning, everyone,
15 this is Charlie Bachand, Director of QA, from CalCERTS.

16 Since I'm not entirely sure how to proceed
17 exactly, I think I'm going to hand over to Mike for the
18 discussion, the broad discussion of the provider QA
19 program, and then we have some individual responses to
20 the sub-questions that were listed.

21 MR. MICHAEL BACHAND: Good morning, this is Mike
22 Bachand. I'm the President of CalCERTs.

23 Congratulations on your confirmation,
24 Commissioner. I heard from the grapevine that that did
25 come through.

1 COMMISSIONER MC ALLISTER: Yeah, you know, thank
2 you very much. Senate Rules voted on it. We still have
3 to -- the Senate still has to vote on it so I'm not
4 quite counting my chickens, yet.

5 MR. MICHAEL BACHAND: You don't have the ashes
6 on your forehead, yet, but coming soon.

7 COMMISSIONER MC ALLISTER: Well, hopefully,
8 hopefully, I think.

9 MR. MICHAEL BACHAND: Okay, thank you.
10 We do have many prepared thoughts and things
11 about this process and we're grateful that it's
12 happening. We appreciate the difficulties and also the
13 benefits that can be had from this. And I also
14 appreciate the insights that you brought forward in your
15 opening remarks.

16 COMMISSIONER MC ALLISTER: Absolutely.

17 MR. MICHAEL BACHAND: Thanks to Pedro and Dave
18 Ashuckian for their assistance and help in thinking
19 through these things, and talking with us, and so forth,
20 and all of CEC staff.

21 What we did was we took each question that's a
22 subset of the topic and kind of put together some bullet
23 point items that we would like to make about those
24 issues.

25 So, I'm going to try this, this way, and see if

1 people -- if that works. And if not, then come over and
2 slap me and I'll do something else.

3 The Provider QA program is very expensive the
4 way it's designed right now. It's tough to meet the
5 quotas. We've had conversations with staff over the
6 years about that and we have found, you know, that the
7 costs are part of the issue for being able to accomplish
8 it.

9 The costs are -- not just our costs, but they
10 have to be passed through to the entire food chain in
11 the HERS program, so everybody feels the pinch.

12 We have increased registry programming and done
13 other things that were not ever contemplated in
14 regulations, not done before, so the cost of that, so
15 that QA can be reviewed by the Commission at an
16 appropriate, hopefully, and so forth, and reports can be
17 made.

18 Another impact is you would think maybe hiring
19 skilled QA reviewers isn't that big of a deal. Go find
20 a rater who's got a lot of experience and do that.

21 Well, that's true, but they may not be located
22 geographically all that well, number one, and they may
23 not -- they may be in a competing business. A lot of
24 the qualified people that are out there, who have done
25 enough ratings to know what a good rating is and what a

1 good rating isn't, are often in business, so they can't
2 go out and rate against people they compete.

3 We're not saying it's impossible. We do have
4 good people, we're hiring more good people, but it's not
5 a snap-your-fingers situation and it does cost money.

6 Another thing is that reviewing the results of
7 all of these things takes more time than just doing the
8 rating. It's not going out to the field, oh, he passed,
9 oh, he failed. There are all kinds of situations that
10 come up that require more office work and more
11 consideration at the decision level.

12 Geography is another problem that makes it
13 expensive and difficult to achieve on a cost-effective
14 basis. There's not very many ratings going on in the
15 northern part of the State, for instance, or maybe up
16 along the crest of the Sierras, but there's raters up
17 there and they need to be QA'd and so forth. So, that's
18 another expense.

19 Getting in to see the homeowners is very
20 difficult. In new construction, obviously, we work with
21 the superintendent on the job and that, but on the
22 alterations side getting people to let us in the door is
23 difficult. And the longer the rating takes, the longer
24 they have to either take off from work and so forth.

25 Finding out who CalcERTS is or CHEERS is, a lot

1 of homeowners don't really understand that process, it's
2 not been particularly well explained to them. So, we're
3 talking about -- I'm not going to throw a lot of
4 solutions out until it's solution time.

5 But one of the things we think about is better
6 consumer education through letters from the CEC, and the
7 raters, and contractors who would have to supply to the
8 homeowner and the consumer in a way that we can track
9 that it's actually happening. It's a good thing to do,
10 but tracking it is not necessarily as easy.

11 Rules of random QA without prior notice have
12 made it harder. In the early days, by that I mean 2003,
13 '04, '05, QA was typically done with a rater on site and
14 he either did a good job or a bad job, and maybe we
15 would tell him, oh, look, you plugged your meter in
16 backwards. The QA reviewer would help the rater in a
17 learning experience, entering stuff.

18 That changed with the 2005 standards. QA was
19 brought out by staff as a more, hey, let's not tell them
20 what's going on, let's check their work and then we'll
21 have results and various discipline after that.

22 And then disciplinary QA is required on some
23 level, we all know that, and that's what third-party
24 verification is all about. We do need that, but if it's
25 applied too sharply and too strictly it can also slow

1 the market down and add to the complaints that come in.
2 We'll speak later about the complaint process and how
3 that's working. That's related to QA, but it's not
4 exactly the same as QA, so it carries some other issues
5 with it.

6 In terms of -- I don't know if you want me to
7 continue with the rest of the questions? If so, I will.

8 COMMISSIONER MC ALLISTER: Go ahead.

9 MR. MICHAEL BACHAND: What changes should be
10 made in the current QA requirement?

11 COMMISSIONER MC ALLISTER: So, let's see, if you
12 can sort of be as concise as you can? I mean, it's fine
13 to treat each bullet separately, but go through them at
14 a relatively high clip. I'd like to make sure we get
15 through all the providers.

16 MR. GOMEZ: And Mr. Bachand?

17 MR. MICHAEL BACHAND: Yes.

18 MR. GOMEZ: You mentioned that you also have
19 some written documents that you'll be putting into the
20 record.

21 MR. MICHAEL BACHAND: Yes.

22 MR. GOMEZ: I know you already did, but do you
23 have more in addition in elaborating here?

24 MR. MICHAEL BACHAND: We do have -- we can
25 submit the statements that we're talking about here,

1 yes.

2 MR. GOMEZ: That would be great.

3 MR. MICHAEL BACHAND: There's a couple of issues
4 that we'd like to strike in text, and do a few things
5 before we actually submit them, but we certainly will.

6 COMMISSIONER MC ALLISTER: All right, thank you.

7 MR. GOMEZ: In terms of, I guess, the oral
8 presentation, if there's something you can hit high
9 levels and then that would elicit a comment and
10 responses from the other providers, and raters, and
11 things, and then we can see where the cinch points and
12 the tipping points are.

13 COMMISSIONER MC ALLISTER: Good.

14 MR. MICHAEL BACHAND: Okay, thank you. Okay, so
15 if you want the other providers to speak about that
16 then, you know, we can stop or do whatever you want
17 or --

18 COMMISSIONER MC ALLISTER: No, I think if you
19 keep it high level, get to your comments, and then,
20 hopefully, the other providers are making some notes and
21 can respond. You know, there are likely to be different
22 viewpoints on these issues and I want to make sure we
23 get those on the record and kind of begin to suss
24 through them here.

25 MR. MICHAEL BACHAND: We're going to kind of

1 alternate between Charlie and myself.

2 MR. CHARLIE BACHAND: So, the next question is
3 what changes should be made to the current QA
4 requirements? Keeping in mind that this is meant to be
5 high level, I'll just touch on some broad strokes.

6 I believe that the quota, as it stands, is too
7 high and I believe that there need to be ways to
8 redefine the quota or reduce the quota in certain
9 circumstances.

10 For example, raters usually test and they pass
11 QA and should be subject to less QA as time goes on.

12 We live in a digital age. Registries can check
13 hundreds of thousands of records at once and that's one
14 way that we can do QA sort of at home, as a data audit,
15 without going into the field.

16 A crucial point to me and one that I've been
17 talking about for some time, and I just want to put it
18 out there, the one that I think is more important is
19 guidance on what is a failure?

20 Definitions have numerical ranges, definitions
21 are how many checklist items are acceptable to fail and
22 still pass a QA, discussion of extenuating circumstances
23 and what sort of judgments providers should make when
24 they see things like a blueprint that shouldn't be there
25 when it's in six months between the initial rating and

1 subsequent QA ratings.

2 I think those are very important points. And
3 particularly, if you were to discuss whole house QA, I
4 believe there are many, many things that need to be
5 better defined in there in order to make that a
6 mentoring process and not a punitive one.

7 We need some guidance on when to apply the plus
8 2 and 2 percent criteria.

9 As everyone probably remembers, if you fill out
10 QA-1s you're subject to additional QA above and beyond
11 the quota. Should that happen right after we find that
12 you've made a mistake or should it happen six months
13 later after you've had the time to repair the mistake?

14 In other words, is it a disciplinary action or
15 is it a teaching opportunity?

16 We want to make sure that everyone understands
17 that it's not possible for us to do all the QA we need
18 to do in January and February. As new ratings come in,
19 they instantly trigger quality assurance requirements
20 that might take us up to six months to meet.

21 We think it's important to differentiate
22 strongly between field verification and diagnostic
23 testing QA. In other words, California 4 compliance and
24 whole house QA, which lends itself much better to a
25 mentoring process, rather than sort of the black and

1 white of field verification and diagnostic testing.

2 And then, finally, another hot button topic is
3 who should be notified of failing QA results?

4 Certainly, the rater in question and, certainly, other
5 providers when it's appropriate, but what about the
6 homeowners, what about building departments, what about
7 the contractors that are involved. All of them should
8 be notified as well, and I hope that this is an
9 opportunity to perhaps discuss that in the rulemaking.

10 COMMISSIONER MC ALLISTER: I have a quick
11 question. So, two questions, really. Do you believe
12 there's a -- so, as far as corrective action, when you
13 find a -- you know, if there's a QC check and there's
14 actually something encountered, can you describe the
15 corrective action that's taken, so it gets to the
16 homeowner question of notification.

17 So, something's wrong that needs to be fixed,
18 right, how does that happen.

19 MR. CHARLIE BACHAND: You're saying if something
20 is wrong and needs to be fixed how does that happen; is
21 that correct?

22 COMMISSIONER MC ALLISTER: Yes. So, if it's a
23 substantive thing, actually the performance of the
24 mechanical system, say, is not there, is likely not
25 there, you know, what happens with that homeowner?

1 MR. CHARLIE BACHAND: There is no mechanism in
2 place for notifying the homeowner. And that's something
3 that I feel is a deficiency that we should address
4 today, if we can.

5 MR. MICHAEL BACHAND: I have a comment.

6 MR. CHARLIE BACHAND: The reason why, and then
7 I'll pass it on to Mike, is let's suppose that we do
8 notify the homeowner that the contractor seems to have
9 failed at his job in installing the HV unit that's a
10 huge world of potential litigation and conflict that is
11 difficult for us to open, without more guidance, I
12 think.

13 MR. MICHAEL BACHAND: That was basically my
14 comment was with regulatory support or guidance we could
15 maybe avoid the litigation portion and get on with the
16 business of getting the consumer taken care of.

17 COMMISSIONER MC ALLISTER: Okay, thanks. And I
18 think we're going to probably -- that's a topic we ought
19 to, you know, delve into at some point.

20 The other question is do you believe that there
21 is sort of a credible threat from the rater perspective,
22 is there a credible threat that there would be QC on any
23 of the jobs that they are doing? So, you know, you're a
24 contractor and you're doing a job, and you think, okay,
25 you know -- I'm doing it unpermitted, so is the city

1 going to find out? Right, they may or may not. You
2 know, some cities you might actually have that worry,
3 other cities actually not.

4 So, I'm kind of wondering, a similar question
5 about the QC departments, the raters and the QC
6 departments, do they feel a credible threat that these
7 guys might show up to actually do a QC check?

8 MR. MICHAEL BACHAND: Yeah, we think that's
9 getting better because of the volume that we're doing,
10 which is substantial. We may or may not be meeting our
11 quotas but we are getting -- a lot of people are hearing
12 from us and a lot of people are hearing about these
13 kinds of situations, the complaints that were filed, and
14 so forth, so I believe it's better.

15 I think that not everybody's in that boat, yet,
16 and there are types of people who, no matter what they
17 think the enforcement is, they're going to do it until
18 they get caught anyway, so they're not really -- that
19 doesn't necessarily affect them, but to the large degree
20 probably not yet.

21 MR. CHARLIE BACHAND: I have one point to add to
22 that. This is certainly the existing world but,
23 currently, raters who pass their quality assurance
24 review are not notified.

25 And there's reasons for that and one of them

1 might affect the future randomness or their ability to
2 predict when their next QA check might occur, which
3 we're trying to avoid right now.

4 So, in many cases raters have been QA'd and not
5 been notified simply because they passed. And so that's
6 also part of why they may not perceive that they're
7 being QA'd as often as they are.

8 COMMISSIONER MC ALLISTER: Okay. It seems like
9 random checks would actually mean that the next -- that
10 even if they just got QA'd they wouldn't be able to tell
11 when they would next be QA'd.

12 MR. CHARLIE BACHAND: Well, let's say you've got
13 one out of a hundred. It's one percent, right, so you
14 do 20 ratings and you get QA'd one, and then you've got
15 80 more before a QA might trigger again, for example.

16 COMMISSIONER MC ALLISTER: And they know that.

17 MR. CHARLIE BACHAND: Yeah, and they do know
18 that.

19 COMMISSIONER MC ALLISTER: Sorry for slowing you
20 down.

21 MR. MICHAEL BACHAND: That's okay, it's your
22 workshop.

23 You know, how should QA be used in the
24 development and training of raters? The first one, you
25 know, basically, if you're finding lots of QA problems

1 on QII, or lower door tests, or something, then your
2 training may need to be stiffened up, you may need to do
3 refresher training. And you can send out notices and
4 take your QA issues and convert them to better
5 information to the raters. That's a simple process. We
6 do that the best that we can.

7 We are beginning to find certain areas that are
8 difficult to -- for raters to do within the guidelines
9 of protocols.

10 Would requiring continuing ed. credits help keep
11 raters informed?

12 We announced that we would be doing that for new
13 raters and continuing raters in the near future. We
14 believe in it. We believe that the CEUs must have
15 substance and be related to the job, and be as quality
16 as the training, itself, that initiates the
17 certification.

18 Finally, how can the QA program be leveraged so
19 that a rater's re-certification depends on meeting QA
20 requirements?

21 This was a bit of a confusing question. I'm not
22 sure, no personal attack here, but I'm not sure this
23 question is worded correctly or I'm not sure that I
24 understand it.

25 We don't actually re-certify people unless

1 they've been decertified. It's not a term that meets
2 any of the process of what we have done or what happens
3 today.

4 So, maybe there's an explanation or a --

5 MR. GOMEZ: Mike?

6 MR. MICHAEL BACHAND: Yes?

7 MR. GOMEZ: I think what we were trying to bring
8 to your attention is once a rater is certified to
9 perform for Cal-CERT at any time do they have to come
10 back in for re-certification?

11 MR. MICHAEL BACHAND: Yeah, regulations say that
12 if substantive changes happen to the code or if the HERS
13 provider makes substantive changes to their program,
14 then raters may be required to come back in.

15 It's not well defined, but it's generally
16 defined as I have characterized it, I believe.

17 MR. GOMEZ: So, we're getting ready to roll into
18 the 2013 standards next January.

19 MR. MICHAEL BACHAND: Yes.

20 MR. GOMEZ: Will your raters have to come back
21 in and get the training?

22 MR. MICHAEL BACHAND: Yes, we've done that with
23 update programs, so we do a training program that
24 emphasizes the changes that build on the certification
25 that a rater already has from the 2008 code. We'll say,

1 okay, here's the differences and here's how it affects
2 you, and so forth.

3 MR. GOMEZ: Okay.

4 MR. MICHAEL BACHAND: So, a focused training for
5 existing raters.

6 MR. GOMEZ: So, what we're trying to get at with
7 this question is when the rater has to be re-certified
8 having then met the QA requirements, having gone as a
9 part of the test for them being re-certified.

10 MR. MICHAEL BACHAND: It could be done that way
11 if applied properly. We would make sure that it doesn't
12 amount to auto suspension or anything. Can he keep
13 working until his QA notification goes -- it would take
14 some details to figure out how that process could work
15 fairly but it could be done, probably.

16 Thank you for that clarification.

17 MR. GOMEZ: Just a reminder, when you're
18 speaking make sure that you are speaking close to the
19 mic because we have some folks that may not be hearing
20 all that well.

21 MR. MICHAEL BACHAND: Thank you.

22 MR. GOMEZ: Okay.

23 MR. MICHAEL BACHAND: One last item. How would
24 an independent third-party QA company help HERS
25 providers meet the required QA goals and allow providers

1 to focus on their core business?

2 This is an interesting question. In theory, it
3 has a lot of pros, but it also has a lot of cons. If
4 providers need to disclose sensitive information, or if
5 there's not adequate oversight then that could cause
6 more problems than it solves.

7 And there's some other details we would want to
8 make sure of. For example, the question of who would be
9 participants in that company? Providers? If providers
10 are allowed at all, there should be equal
11 representation.

12 Rating firms? Do they have representation on
13 this Board.

14 This would need to be independently decided so
15 that there's across-the-board fairness.

16 It sounds like it's creating a new marketplace
17 for the QA companies. Would there be multiple ones? If
18 there's only one, would all providers be required to use
19 it or would it be an option.

20 COMMISSIONER MC ALLISTER: Right.

21 MR. MICHAEL BACHAND: Would the QA companies be
22 answering to the CEC independent of providers?

23 Those are questions more than answers, I
24 understand, but they're ones that came to mind.

25 COMMISSIONER MC ALLISTER: And we'd like you to

1 tell us the answer to those questions.

2 But I would just say broadly speaking, I mean in
3 this proceeding, there is a question of when we have
4 these assessment marketplaces there needs to be some --
5 there needs to be some very capable, sort of uber-
6 capable entities providing some technical assessment of
7 how that work is going. We just saw the same thing with
8 Title 24, and with the lighting, and commercial,
9 mechanical systems, you know, so we did something sort
10 of similar to what this question is getting at.

11 There the question is some kind of independent
12 QA here, too. So, you know, I don't think we have a
13 particular answer in mind that we want to go to. I
14 think we really, legitimately, find out from the
15 marketplace what's more likely to work.

16 MR. MICHAEL BACHAND: Our main concern was
17 releasing business materials and information that could
18 be reverse engineered to calculate our financials and
19 things if they know what the one percent number is, et
20 cetera, et cetera. So, the devil's in the details on
21 that one.

22 COMMISSIONER MC ALLISTER: Okay, great.

23 MR. MICHAEL BACHAND: That's what we have for
24 comments for that topic.

25 COMMISSIONER MC ALLISTER: Thanks very much.

1 And let's move on to the next set of providers.

2 MR. CHARLES: This is --

3 MR. GOMEZ: Don?

4 MR. CHARLES: Yes.

5 MR. GOMEZ: Don, let's have CHEERS go and we'll
6 bring it to your attention when it's your opportunity to
7 provide comments. You okay?

8 MR. CHARLES: No problem. Thank you, yep.

9 MR. GOMEZ: All right.

10 COMMISSIONER MC ALLISTER: Introduce yourself,
11 please.

12 MR. LENZMEIER: Good afternoon, Commissioner
13 McAllister. My name's Jay Lenzmeier and I am the
14 Executive Director for CHEERS.

15 CHEERS was approved as a provider on February
16 13th, of 2013, which was two weeks ago, and we are
17 thrilled and excited to be an approved provider in the
18 State of California. And we look forward to working
19 with the CEC, and CEC staff, and other interested
20 parties to help advance the HERS Program in the State of
21 California.

22 COMMISSIONER MC ALLISTER: Congratulations.

23 MR. LENZMEIER: Thank you.

24 Unfortunately, because we're new to the industry
25 as a provider, our responses are going to be coming from

1 the table mainly from our understanding of the CEC
2 regulations, and our discussions with the CEC staff, and
3 not more, obviously, from our experience in the field.

4 So, we don't have the level of experience that
5 the other provider does, but we will respond with the
6 information that we know.

7 And I'm going to hand it over to David Meyers,
8 who is our Operations Manager.

9 MR. MEYERS: Thank you. Okay, just in starting
10 I'd like to cover what Commissioner McAllister had
11 mentioned, just some quick points.

12 That we definitely agree with him based on
13 looking at the QA requirements that from an expense
14 standpoint it's a pretty serious impact on our budget.

15 And definitely, just in looking at the work flow
16 and how we would execute QA there appears to be some
17 logistical challenges that we would need to overcome.

18 With regard to the volume of QA, we definitely
19 agree that that should be evaluated. I believe
20 currently there's one percent of the raters tested that
21 need to be QA'd, amounting to one -- one percent of
22 sampled units. And then there's an additional one
23 percent of the remaining database, the provider database
24 tested and sampled.

25 And I propose that that additional one percent

1 be evaluated. That could be the area where you could
2 take advantage, possibly eliminating that, and you're
3 still providing one percent of tested and sampled QA on
4 the raters.

5 And we also agree with CalCERTS' position on PE.

6 So, I'll quickly touch on some of these
7 questions. I covered the volume. As far as training,
8 how should QA be used in the development and training of
9 raters?

10 CHEERS position is that the QA should not be
11 used as a training tool. It's not a cost-effective
12 tested mechanism, delivery mechanism excuse me, to
13 deliver training. It should be used to evaluate the
14 raters' performance and how well they've been trained.

15 So, we would argue that, you know, certainly
16 they can take some mentoring from the QA process, but as
17 far as treating it as a QA -- sorry, a training tool,
18 that probably wouldn't be advisable.

19 COMMISSIONER MC ALLISTER: Do you have any
20 comments on sort of the communications that QA could
21 generate between provider and rater?

22 MR. MEYERS: Well, I think if --

23 COMMISSIONER MC ALLISTER: Whether or not they
24 pass -- like if they pass and if they fail, what that
25 might be?

1 MR. MEYERS: Yeah, certainly, if approached
2 correctly it should be a positive. It doesn't have to
3 be adversarial or necessarily used as punitive from the
4 provider. So, I think it can definitely be a positive
5 interaction.

6 Do you have any thoughts?

7 MR. LENZMEIER: Yeah, and I think it should be a
8 back and forth sort of a discussion between the rater
9 and the provider to determine, in fact, what the issue
10 is, what the issue was, understand what happened and
11 the --

12 MR. GOMEZ: Jay? Jay, pick up the mic, please.

13 COMMISSIONER MC ALLISTER: Yeah, the mic. I'm
14 sorry.

15 MR. LENZMEIER: So, I think it should be a back
16 and forth between the rater and the provider to
17 determine what the extent of the issue is and how that
18 issue should be resolved.

19 COMMISSIONER MC ALLISTER: I'm wondering if
20 there's a way -- you know, Charlie brought up the, you
21 know, by just even notifying the passing rater that they
22 passed, you are giving them some information that may
23 inhibit the QA going forward. I'm wonder if there's a
24 solution to that that can both have sort of --

25 MR. MEYERS: I can comment on that. CHEERS'

1 position is that if a rater passes QA, we have every
2 intention of letting them know that. We don't think
3 that that's a problem. In fact, we think that's a good
4 idea.

5 Eventually, we're going to provide the QA
6 results online.

7 COMMISSIONER MC ALLISTER: Okay, thanks.
8 Thanks. Go ahead.

9 MR. LENZMEIER: Okay. As far as the QA program
10 being leveraged so the rater's re-certification depends
11 on meeting QA requirements, this question was a little
12 quizzical.

13 I mean, basically, CHEERS' position is that in
14 order to maintain good standing with CHEERS a rater's
15 going to need to pass their QA and not have any issues.

16 So, if they don't pass the QA and they move into
17 a two percent or areas where they're going to require
18 additional training that could definitely affect their
19 standing with CHEERS. So, I think it's somewhat
20 independent based on how they do during the QA.

21 COMMISSIONER MC ALLISTER: It sounds like the
22 re-certification is creating a little confusion where,
23 really, the question is sort of the ongoing -- yeah.

24 MR. LENZMEIER: Yeah. As far as looking at
25 quality assurance being provided by an independent third

1 party, CHEERS would definitely support working with the
2 CEC, CalCERTS and other key stakeholders to evaluate if
3 we could make that transition. Inherently, there's
4 certain challenges with having raters as our clients,
5 who we in turn have to turn around and perform QA.

6 So, if you look at the industry five, six years
7 from now and you potentially have got five or six
8 providers and there's no standard as far as how QA is
9 performed by those providers, arguably, you could have
10 raters saying, well, I'm not going to give you my
11 business. I'm going to go to another provider who
12 doesn't necessarily perform QA the way you do.

13 So, I think -- sorry, I've got a bit of a cough
14 so I've been hacking all day.

15 So, I think definitely CHEERS would support
16 evaluating looking at the QA processing performed by an
17 independent third party.

18 COMMISSIONER MC ALLISTER: So, I have -- this
19 seems like a critical issue to me because there's the
20 cost and it seems like it's a lot of effort so it
21 implies a lot of costs. If we peeled it off from the
22 providers and put in a third party then, you know,
23 there's some kind of -- intrinsically, you know -- well,
24 splitting it out where you have the third party there's
25 still -- it seems like the cost for doing it right in

1 compliance with statute are -- or complies with the
2 regs, actually, are not fully being met.

3 So, we want to not have it be an onerously
4 expensive process but there's a tradeoff here that we
5 really need to work through and I think the answer is
6 not clear. And so this process or this dialogue are
7 key.

8 So, I guess, you know, understanding the
9 potential dynamic of the benefits and -- the sort of
10 positives and negatives of having an independent third
11 party do the QA and get sort of involved in the
12 business, which they inherently would have to be,
13 understanding that is really key.

14 I think, you know, your input on that are going
15 to be -- you know, the public, we have an ongoing
16 dialogue and build the record on this with written
17 comments, and I think that's going to be very helpful.

18 MR. LENZMEIER: Thank you.

19 MR. GOMEZ: Don Charles.

20 MR. CHARLES: Yes.

21 MR. GOMEZ: It's your turn.

22 MR. CHARLES: Yeah, just I'm going to --

23 MR. GOMEZ: Don?

24 MR. CHARLES: Oh, well, let me introduce myself.

25 Hi, my name is Don Charles. Sorry, I'm really getting

1 on the comments here.

2 Recently took over the CDPECA HERS providership.
3 We assumed operations of that December 1st.

4 Commissioner McAllister, you and I haven't had a
5 chance to meet or speak, so a pleasure to talk to you
6 and congratulations, as well, from us.

7 COMMISSIONER MC ALLISTER: Thanks for that.

8 MR. CHARLES: Yeah, no problem. Really very
9 excited about joining the ranks with CalCERTS, CHEERS,
10 our fellow companies because I think, ultimately, we all
11 have an opportunity here. Yes, on one hand to compete,
12 but also on another hand to set a standard of excellence
13 for the industry and work cooperatively together to
14 achieve something really good, which I think the State
15 of California and the CEC has really set in motion here.

16 And although it may not be perfect to date, I
17 think what is the goal of everyone and what has been set
18 in motion is something to make California a more energy
19 efficient state to protect homeowners, to help
20 contractors perform their jobs at a higher level.

21 So, I think everything that's really been set in
22 motion here, even though it may not be perfected yet, is
23 a really good thing for a lot of people.

24 And I know and I speak for USERA that we are
25 very excited to be a part of that process and think it's

1 a very good thing and, ultimately, think that all of us
2 working together will get this right and it will be a
3 very productive, you know, solution for the State of
4 California.

5 So, we're very grateful to be part of it. And I
6 also would like to say thank you and hello to CHEERS and
7 CalCERTS, my counterparts on the other side, and looking
8 forward to working cooperatively with you guys to raise
9 the bar in the industry here. So, I'm just glad to be
10 here.

11 On another note here, I guess we're going to
12 reserve a lot of our comments because I am kind of the
13 new guy on the block and I'm still learning some things
14 about code and things that I need to learn. I have our
15 QA director online with me today, too, Greg Davis, who
16 many of you know, so he can chime in as needed.

17 But most of the comments I'm going to reserve
18 and we're going to think about what's being discussed
19 today and get back, and we're going to have our own
20 independent conference, and issue some comments back.

21 But I just wanted to address kind of the final
22 part there about the independent QA process. Granted,
23 I'm not going to elaborate too much on it, but my
24 initial thought is that is not a good idea. And the
25 reason is that I don't want our business opportunity

1 ultimately be whittled away at. The more we start
2 casting off to other, independent companies we start to
3 lose our business model and it basically starts to
4 whittle away at the need for even having providers.

5 So, I would suggest that an independent process
6 would not be a good thing and I would not be in favor of
7 that.

8 I disagree, respectfully, with my friends from
9 CHEERS in that I believe that the QA process can be a
10 good training exercise. We recently had a situation
11 that come up where, in fact, that was the case. And we
12 also believe that the QA process can glean a lot of
13 information that can be subsequently put back into
14 certification training to see where we have deficiencies
15 and where things aren't properly being trained or
16 learned. And we believe that is a good opportunity to
17 say, hey, what's going on with the rater in the field
18 and can we correct that.

19 In the recent situation that we had, we actually
20 had the rater pay for that additional training process.
21 We went out and worked with them, where they were having
22 some struggles, and they paid for us to come out and do
23 that. So, we joined up our QA process with an
24 opportunity to say, hey, okay, here's where you're doing
25 some things wrong and helped them make those fixes and

1 corrections.

2 So, I understand that it shouldn't be used
3 exclusively for training but I think there's a great
4 opportunity, ultimately, to help these guys get this
5 right. And I think that's most of the hearts of the
6 raters is that they do want to do a good job. And so I
7 think it lends itself to providing those opportunities
8 to do that.

9 But on that, just a last comment is that I would
10 not be in favor of an independent third-party company.

11 And as far as the re-certification,
12 decertification question, my thought there would be,
13 just initially speaking, that I think that if the CEC
14 might want to provide an additional layer of QA or an
15 audit, and it needs to go into a possible
16 decertification setup where then an independent auditor
17 from the CEC could come out and verify what the
18 providership is seeing and then, ultimately, possibly
19 make that determination as to decertification based on
20 an extra layer of auditing taking place at a very
21 official level.

22 So, that would be kind of my just basic thoughts
23 toward that and I think I'll reserve comment on the
24 rest.

25 MR. MEYERS: I have one quick comment, if I

1 could?

2 COMMISSIONER MC ALLISTER: Okay.

3 MR. MEYERS: David Meyers with CHEERS. I would
4 caution that if -- there's a difference between training
5 and mentoring and learning, and if you've got a
6 situation where the provider's QA is resulting in
7 additional revenue in training, that's a problem.

8 So, I would just caution you to look at that and
9 say, you know, you've got a QA function that could
10 potentially result in additional revenue for providers
11 and that, to me, is an area where a line should be
12 drawn.

13 COMMISSIONER MC ALLISTER: Well, I guess it
14 seems kind of analogous for me when, you know,
15 contractors are sort of using the building officials to
16 learn the ropes, you know, it sort of -- Bob's laughing
17 or whatever.

18 I know that, you know, the AB 20 rule applies in
19 a lot of cases here where, you know, if you have folks
20 who consistently don't do very good work and lean on the
21 quality process or inspection process to kind of learn.
22 And then, you know, the hope is that eventually they get
23 better but you never know, really, in practice.

24 So, it seems like we have differences of opinion
25 and maybe they're qualitative, and maybe they're not.

1 It's kind of hard to say at this point but I think your
2 written comments are going to be helpful and,
3 potentially, future dialogue on this as well.

4 I have a question for the three of you,
5 actually. I would ask you to distinguish or sort of
6 help us understand the differences in the problem,
7 essentially, in dealing with QA effectively and cost-
8 effectively and, really, the differences between the new
9 construction environment and the alterations
10 environment. It seems like that most of the problems
11 we're talking about here are operations and most of the
12 issues, sort of the transaction costs here have to do
13 with operations.

14 I'm not sure if I'm hearing it right, but I'd
15 like to sort of get your input on where sort of the
16 largest issues are.

17 MR. CHARLES: Well, before that, if you wouldn't
18 mind, I'd like to respond to the last comment there. If
19 there is an issue, I'm certainly happy to address that.
20 But in every other business that I've ever been
21 associated with, when a supplier or a vendor has an
22 issue with a particular process that usually just isn't
23 something that they receive, necessarily, for free.

24 You know, we are in business. Some may be
25 operating as nonprofits, but if additional time and

1 training is necessary to get somebody back on track,
2 whether it happens through QA or any other mechanism,
3 I'm not quite sure I understand the conflict that was
4 brought up there. It's very common if you're a Trane
5 dealer -- if you're a Trane dealer and you're having a
6 problem installing Trane, you know, usually they're
7 going to send out somebody and it's not going to be just
8 for free.

9 So, I think, you know, again, it can be up to
10 the rater whether or not they want to receive that
11 additional training but I think it's -- I think, you
12 know, I've heard -- some of the comments that I've heard
13 already is it's very costing on the providers.

14 Well, this is an opportunity for some of those
15 things to be covered and, yet, at the same time use it
16 as an opportunity to make a rater better.

17 MR. CHARLIE BACHAND: I have a brief comment to
18 make. At the risk of interrupting the flow in the
19 discussion of alternations and new construction, I do
20 want to point out, you made a very good point, Dave,
21 that QA should never be perceived or treated as a
22 revenue source. But when you said that it should not
23 lead to additional training that's where I was thinking
24 to myself, well, if you fail QA often enough, if
25 training is not your way of addressing that, then

1 ultimately you have to just decertify.

2 And so, to me, QA should lead to training. It
3 shouldn't be treated as a revenue source, but training
4 is certainly a good way of addressing those problems, I
5 think.

6 MR. MEYERS: Yeah, this is David again. I
7 apologize. I didn't mean to infer that CHEERS would not
8 require additional training as a result of a QA failure.
9 Certainly, we would.

10 And that's the process that we've submitted to
11 the CEC, that's one of the options that we provide.

12 COMMISSIONER MC ALLISTER: Well, it seems like a
13 legitimate question here, like whether there's a -- you
14 know, whether there's a clear conflict of interest here
15 where you're delaying and you're saying, oh, you know,
16 you got to go get some more training. Oh, and by the
17 way, we have a course for you right here.

18 MR. MEYERS: Yeah, and that's my concern that,
19 you know, intuitively that's a --

20 MR. MICHAEL BACHAND: There are other standards
21 that that would violate, too. Standards where
22 separation of QA from training is important because it
23 speaks to how good your training is and it speaks to how
24 good your QA is, so it takes the bias out of the
25 equation.

1 COMMISSIONER MC ALLISTER: And actually, you
2 know, I guess my -- you know, we're in a market
3 transformation period and so it is a -- there aren't
4 that many who are fully qualified. There's a lot of
5 knowledge out there that needs to be transmitted. You
6 know, in an arena where a lot of experience is just kind
7 of put in management, you know, using those and having a
8 qualifying inspector who goes out there and like really
9 hand-holds the contractors who are trying to get into
10 this marketplace, it has huge value.

11 You know, it's easy to do that when it's not the
12 actual customer who's paying for it all, you know, when
13 it's some sort of program, or ratepayers generally, or
14 something like that, where you really have an explicit
15 market transformation kind of arrangement.

16 Which is not the case here and that's what makes
17 this more challenging.

18 MR. MICHAEL BACHAND: In answer to your
19 question, new construction versus alteration, yeah,
20 there is a substantial difference in that process. We
21 don't have a homeowner to deal with in new construction.
22 We can go out on a more or less volume basis, we can
23 look at two or three homes on one trip, you know, and so
24 forth. So, that's fairly well defined.

25 The builder and the contractor -- the builder's

1 the installer, essentially, on all of the things.
2 There's installing contractors for the various things,
3 yes, but overall the builder has the interest in getting
4 it all approved and inspected correctly, and so forth.

5 On the alternations side, as you know, each one
6 is a single operation, a single job, with a single
7 homeowner. The phone number may not be in the registry
8 correctly, the homeowner may not know who you are.

9 We tried to go into a priest's house in Santa
10 Rosa and he said no. Gosh, like what do we do? So,
11 just a lot of people who don't know, many of them -- we
12 just dealt with a homeowner, an 80-year-old widow. She
13 got a letter -- a call from CalCERTS and said, hey, can
14 we come and do your stuff, she really didn't know who we
15 were. She panicked, called her contractor. The
16 contractor called me up, ripped my ear off and handed to
17 me.

18 And then I said, okay, I fixed the problem,
19 everybody's fine.

20 But the alterations market is difficult. It's
21 also got a lot of rater to contractor connectivity. I
22 mean, the way it's designed right now -- I'm not saying
23 we want to maybe jump into all of that, but it lends
24 itself to closer confluence between the contractor and
25 the third-party inspector, so there's a little bit of

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1 issue there, too.

2 MR. CHARLIE BACHAND: I have one other point to
3 add, really briefly. New construction --

4 MR. GOMEZ: Charles?

5 MR. CHARLIE BACHAND: Excuse me?

6 MR. GOMEZ: Make sure when you come back to that
7 mic you have to reintroduce yourself.

8 MR. CHARLIE BACHAND: I apologize, Pedro. This
9 is Charlie Bachand, again.

10 New construction QA, particularly with QII,
11 framing stage, we see that the problem there is one of
12 logistics, as CHEERS was saying. If you show up four
13 hours late, you're too late to do QA on some of those
14 measures. And I foresee that being much more of a
15 problem with the 2013 code.

16 So, the logistics of getting the rater out there
17 at the right time, and then the QA rater at the right
18 time, without the rater's prior knowledge that he's
19 going to be there, and then all of that takes place
20 before the drywall is done, is actually a very difficult
21 one for us to achieve.

22 And historically you'll find that it's been one
23 of the hardest measures for us to do QA on for that
24 exact reason. It's interesting.

25 COMMISSIONER MC ALLISTER: So, we're going to

1 have to move along, I think.

2 MR. GOMEZ: Yeah, can I just jump in with a
3 follow-up question?

4 COMMISSIONER MC ALLISTER: Yeah.

5 MR. GOMEZ: I know the third item that you
6 talked about, how should QA be used in involving
7 training the raters?

8 I'd like to maybe change the question a little
9 bit and ask how does the provider -- what does the
10 provider do with the information once they QA someone
11 and they fail, and they fail again, and they fail again,
12 and they go out and QA 50 raters. And you start seeing
13 a pattern where folks are failing the same thing, right,
14 that same measure, how do you -- what do you do with
15 that information?

16 MR. CHARLIE BACHAND: This is Charlie, again.
17 We have noticed that in a couple of cases and the answer
18 is that there's not one exact answer for that.

19 For example, if we find a pattern of QII
20 failure, then we can start addressing that problem with
21 technical bulletins, or requiring additional training,
22 perhaps, only on the QII criteria, rather than making
23 people sit through the entire course of training for new
24 construction.

25 In other cases we've found patterns, like the

1 recent TMAH issue, where the issue existed for many
2 raters all at once and yet, QA wasn't able to really
3 communicate that to the training staff, at CalCERTS
4 because the central problem was that it was very
5 difficult for raters to achieve that because of code.

6 And so I'm just listing two examples that
7 illustrate that we can -- we do, when we can, bring that
8 QA information to the raters in general and to our
9 training staff, saying, hey, these guys are failing QII,
10 can we look at maybe expanding that course.

11 But in other cases it's not as clear what we
12 should do in those cases.

13 MR. MICHAEL BACHAND: This is Mike, I have a
14 short comment on that, too.

15 The other thing we do is we throw the Energy
16 Commission under the bus, and that is -- look, your
17 protocol needs a little tweaking, maybe, or could we get
18 an interpretation?

19 And I know staff, and we have a great
20 relationship with staff, and it's very difficult, and
21 there are differences of opinion on the staff as what
22 should be properly done. And that's okay, that's how
23 the world works.

24 But we've mentioned -- maybe in another comment
25 later on about that very thing is getting -- getting all

1 of the solutions figured out. The QA can help us
2 retrain, but it can also help us refine the protocols
3 and the random selection process, and lots of other
4 things. So, thank you for an opportunity to say that.

5 MR. GOMEZ: Thank you.

6 COMMISSIONER MC ALLISTER: Great, so I'm
7 thinking, you know, absolutely, the gloves are off. All
8 right, so we've burned up an hour just on sort of the
9 first panel and the first of the questions. So, I know
10 we're going through some foundational stuff here, which
11 we won't have to repeat going forward, but I'd like to
12 move on here and get the HERS raters up to the tables.

13 MR. GOMEZ: Thank you. So, if raters in the
14 audience want to swap with the providers, you have an
15 opportunity, now, to speak on the first topic.

16 COMMISSIONER MC ALLISTER: I'm going to ask that
17 you try to keep it as quick as possible and, you know, a
18 lot of the issues here have been teed up and definitely
19 want to hear what you guys have to say. And I've just
20 already, even at this early hour, got the eye on the
21 clock to make sure we're moving along so we can finish
22 by a reasonable hour this afternoon.

23 MR. GOMEZ: Commissioner, I just wanted to
24 remind you to please state your name for the record.

25 And for the folks on WebEx, at the conclusion of

1 the comments in-house, we will turn to you.

2 COMMISSIONER MC ALLISTER: I'm also going to ask
3 just -- well, really just clarify. There's a lot of
4 knowledgeable staff in the room here, as well, and
5 staff -- number one, staff should -- I don't know other
6 things that I ought to be asking and I don't know
7 everything there is to know about this, obviously, so
8 I'm probably one -- there are more knowledgeable people
9 in the room here.

10 So, it doesn't make sense that I control the
11 questions, the interaction here.

12 So, I think that staff, if you have -- you know,
13 if there are individuals on staff are in the room, and
14 want to drill in, feel a need to drill into some of
15 these topics, then please do so. You know, work with
16 Pedro to make sure or come up to the dais.

17 And then, number two, I think to the extent that
18 we get a topic that's pretty clear that we're not going
19 to solve in back and forth here today, but it becomes
20 clear that it's an issue that needs resolution, I think
21 we need to sort of get with -- you know, huddle among
22 the immediate stakeholders on that.

23 And we talked about it before and I neglected to
24 mention in my opening comments that a possible outcome
25 of today is to have working groups on those core topics

1 that need discussion and resolution.

2 And so, I think keeping in your mind what those
3 topics are and we'll try to put something together, and
4 follow up with the sort of list here to work on that
5 topic. We talked about a couple of them in the QA, so
6 we might want a QA working group to sort of hammer some
7 of those things out, for example. So, thanks and go
8 ahead.

9 MR. NESBITT: I'll start. George Nesbitt,
10 Environmental Design Build.

11 QC is the process of throwing out the bad parts
12 and we have managed to throw out a few of the bad
13 raters, probably not all.

14 QA is about improving the process, finding the
15 problems with the process, improving the process,
16 learning from the mistakes, learning from the bad parts.

17 The problem is that you've made QA invisible.
18 Essentially, over a decade, as far as I know, I have not
19 been QA'd. It took me six and a half years to get QA'd
20 as a Green Point Rater.

21 And then, you know, four years after the job,
22 oh, well, that's not good enough. Well, thanks. Oh,
23 and no one gets that right. Well, thanks.

24 So, I've said to the provider, you know, they
25 talked about QA and we find this, blah, blah, blah.

1 Well, I want to know. I want to know that you're
2 finding that people aren't setting up the duct blaster
3 right, or a blower door, or enter -- I never entered
4 failures into the registry for years, despite everyone
5 having failed.

6 So, if I know what we are doing wrong as raters,
7 I can help correct.

8 COMMISSIONER MC ALLISTER: I didn't quite get
9 that. So, you didn't enter failures into the registry?

10 MR. NESBITT: Yeah.

11 COMMISSIONER MC ALLISTER: I'm not sure I quite
12 get your meaning.

13 MR. NESBITT: Yeah, so, you know, at some point
14 somebody said if there's a failure, you need to enter it
15 in the registry and then enter it as a re-test. So, for
16 years I never did that. You know, maybe it was bad,
17 maybe I forgot about it.

18 You know, but then, again, we also were told at
19 one point never issue a CF1RPV that is not the same as a
20 4RPV.

21 Well, I pissed off the "old cheers" by
22 submitting them.

23 CalCERTS won't let us issue a CF4RP for a
24 failure. I can't do my job if I can't say fail
25 sometimes.

1 But I'm going to try to bring this back to more
2 brevity. We need feedback. It could be because there's
3 a failure of training. We need individually, as a
4 rater, feedback. Collectively, we need feedback. It
5 needs to go back into the training. It needs to go back
6 into the regulations.

7 If there are consistent problems, we need to
8 learn, we need to improve the process. Because,
9 remember, we want compliance.

10 It does me no good as a rater if I just go out
11 every day and fail the contractor. I want them to pass.
12 I can't fail them one day and then just come back and
13 say, well, you failed again today. I have to help
14 educate them, help teach them in what they need to do to
15 be able to pass, ultimately, and that's what we want.

16 So, QA needs to be earlier. And, quite frankly,
17 one percent's a joke. Gary Klein would say we should QA
18 20 times before we go to sampling.

19 As raters, we have to do a one plus seven or,
20 you know, there should be some hundred percent until you
21 prove, yes, you can do it right before you go to
22 sampling.

23 MR. GOMEZ: George, I'm going to --

24 MR. NESBITT: I know. Let me just try to make a
25 few quick comments.

1 CEUs, no problem with that. Obviously, if
2 people are failing, they can be decertified or should
3 not be re-certified under the new code. I don't think
4 that's a big problem.

5 The rules need to be the same for all the
6 providers in a multiple-provider environment, which
7 means the rules have to be in Title 20.

8 I think we raters could disclose to homeowners
9 and clients that there may be QA and set them up for
10 that phone call from CalCERTS or CHEERs.

11 When a contractor fails, the contractor is
12 supposed to go back to the owner, especially if it's
13 already occupied, to give them the option to have them
14 correct it or not.

15 So, if a rater is failing and a measure fails,
16 the homeowner needs to be notified and the contractor,
17 because someone's legal responsibility hasn't been met
18 and all these other factors --

19 COMMISSIONER MC ALLISTER: So, I think we're
20 going to get legal on that one.

21 MR. NESBITT: Then there's Karen.

22 COMMISSIONER MC ALLISTER: So, George, do you
23 submit written comments on our record? I haven't seen
24 them very often, but it would be very helpful.

25 MR. NESBITT: You're lucky I show up.

1 (Laughter)

2 MR. NESBITT: And at 7:45 I realized it was a
3 nine o'clock meeting, which meant I couldn't take
4 Amtrak, at 6:45 this morning.

5 MR. BREHLER: Related to that, George, I mean
6 even your informal notes can be docketed and the docket
7 is going to remain open after today's workshop. And so
8 if folks have written notes, comments, any other
9 documents they have should be submitted to the record so
10 we can have this.

11 This is going to be an ongoing proceeding and
12 we're building the body of evidence that we need to
13 determine what, if any, changes should be made. And
14 again, that's why the comments should be high level and
15 supplementing by filing to the docket. Thank you.

16 MR. GOMEZ: Okay, thanks, George.

17 Can we get the next person, please?

18 COMMISSIONER MC ALLISTER: Yeah, I guess we're
19 going to hopefully --

20 MR. AMARO: My name's Allen Amaro, I've been a
21 long-time HERS rater. And I'm going to just give you
22 four quick points here. Hopefully, it will take less
23 than three minutes.

24 First, QA's about a finished product. In this
25 case, where we're doing HERS rating, you're not Q&A'ing

1 somebody before they do the job. You're Q&A'ing them
2 before they do the job.

3 To me, some of the comments that were made today
4 by the providers about maximizing profits, which is the
5 way I feel about it, and minimizing costs, this is --
6 you know, there's a cost of doing business and that
7 should be evaluated and put into the mix and satisfy
8 both parties with that cost.

9 Your contract with the provider, in this case
10 that I'll be talking about is with CalCERTS, was that
11 they QA you or talk to you, or whatever. It never got
12 done. They violated their contract.

13 But, yet, the process is that there's no way to
14 connect the violation of the process with them versus
15 you because you're the loser, the HERS rater is a loser
16 so they could care less.

17 The fourth comment I'll make, because I know
18 that I like to hear this short because I like to hear a
19 lot of the other comments, is CalCERTS talked about
20 connectivity between the contractor and the rater when
21 we're doing units or homes that are already established,
22 which I think is an insult to the rater. For the simple
23 fact of it is the rater's out there to do his job, he
24 knows what it is. You have to work with the contractor.

25 At times, you have a very close relationship to

1 get these things done, and to coordinate, and to make
2 sure that you understand all the things that are
3 happening with the particular property.

4 So, I would not put emphasis on the rater and
5 the contractor unless there's a direct conflict, and I
6 mean a very apparent and direct conflict. But I think
7 you should have some trust in your raters, that's what
8 they're there for.

9 And to say that you can't -- you know, that you
10 have some suspicion, well, God bless, I mean, we all
11 have suspicions.

12 So, that's my comments on QA. Thank you.

13 COMMISSIONER MC ALLISTER: Thanks very much.

14 MR. GOMEZ: Brian.

15 MR. SELBY: Brian Selby from Benningfield Group.

16 I am a certified energy analyst, HERS rater, energy
17 nerd. I've been doing this since the mid-eighties.

18 I've had the pleasure of being mentored under
19 people like Charles Segerstrom, sitting here in the
20 room, through a training program at PG&E, and Douglas
21 Beaman.

22 I am in support of a third-party quality control
23 company. Not aside from having providers provide a
24 quality control program within the company.

25 And just a little bit of background. Back in

1 the day, as a young rater, when I had hair, working with
2 CHEERS I would be eager to get a quality assurance
3 check. These were opportunities where I could shine.
4 Doug or his son, Brian, would call me up and say, hey,
5 let's schedule a quality assurance check, let's go out.
6 I was excited to meet with these people.

7 It was a training opportunity not only for
8 myself, but for them. They're seeing how a young rater
9 is actually performing in the field, in their
10 environment. And the interaction as far as training
11 went both directions.

12 So, on a quality control standpoint, that
13 dynamic worked very well.

14 Now, quality assurance is another thing. As the
15 Energy Commission wants assurance that raters in the
16 field are actually providing the service that they're
17 obligated to by their standing.

18 I believe that a third-party quality control
19 company would be essential in order to perform that. It
20 would not only remove the enforcement from the provider,
21 it would increase the communication between a provider
22 and rater. So, thanks.

23 COMMISSIONER MC ALLISTER: How about we just
24 continue out this side.

25 MR. YOUNG: My name's Tommy Young. I'm the

1 owner of E3 NorCal.

2 MR. GOMEZ: Could you speak closer, please?

3 COMMISSIONER MC ALLISTER: Actually, George,
4 could you come over and sit down maybe at the end of the
5 line here?

6 MR. YOUNG: How's that.

7 MR. GOMEZ: Okay.

8 MR. YOUNG: My name is Tommy Young. I'm the
9 owner of E3 NorCal. We're a HERS rating company with --
10 oh, we've got about four HERS raters that work for us.

11 And I initially wanted to talk about something
12 that seems to be entirely left off the table and, yet,
13 it's sort of the cornerstone of what the HERS, why it
14 was implemented, and that was to save energy and for
15 consumer protection. And we're not talking about that
16 at all.

17 So, it seems a disservice, that if something
18 fails, you're not informing the consumer, because I
19 think every single person in this room, if your house
20 was issued a faulty inspection report that said pass and
21 somebody knew it didn't pass, and they didn't call me,
22 and I paid for that efficiency that can be quantified
23 and monetized. And, you know, eventually enough people
24 are going to realize, hey, we didn't get what we paid
25 for. We're going to get it somehow.

1 Number two is I think that we really need to
2 define the difference between failing QA and I'm --
3 throughout, if I get the opportunity to talk again, I'm
4 using baseball as a metaphor because it's baseball
5 season.

6 But we've got a strike zone that changes
7 depending in the umpire. There's gray areas. Certain
8 things are absolutely, positively, one hundred percent
9 of the time you're out.

10 And I think what we failed to define and what we
11 need to define is the difference between failing QA and
12 rater fraud. There is -- it's such an obvious thing
13 but, yet, sometimes we're going to say that rater fraud
14 is nothing more than, ah, you know, they didn't really
15 mean it.

16 COMMISSIONER MC ALLISTER: I'll just point out
17 that, you know, we'll talk about the complaint process
18 later on.

19 MR. YOUNG: Okay.

20 COMMISSIONER MC ALLISTER: And this actually --
21 when we had an actual complaint and we worked through
22 some of these issues, we did actually discuss quite a
23 bit.

24 MR. YOUNG: Okay.

25 COMMISSIONER MC ALLISTER: Not necessarily in

1 the terms that you've put it but, certainly, I think
2 more on the sort of what constitutes fraud and what --
3 yeah, and so --

4 MR. YOUNG: Yeah, I was just trying to contrast
5 rater fraud with QA -- in the absence of QA.

6 And then the last two points are simple and it's
7 from the cynic's perspective of perhaps what a provider
8 might be thinking. And that's, to me, I think a HERS
9 provider could have a vested interest in not failing
10 their raters. If you fail your rater over, and over,
11 and over for the same thing, I think that comes back to
12 your training.

13 And if that actually got out to the consumer
14 that a HERS provider -- you know -- sorry, lost my train
15 of thought.

16 And lastly, I think, cynically, that a provider
17 can say they aren't telling raters about QA because it
18 holds them not accountable to comply with the one
19 percent. We never told you.

20 So, as a rater, I feel like I'm due, I'm owed
21 that one percent. I've been paying for it for years.
22 Have I been, have I been QA'd, I don't know.

23 COMMISSIONER MC ALLISTER: Yeah, the paper trail
24 seems to be an ongoing problem here.

25 MR. YOUNG: That's all. Thank you.

1 COMMISSIONER MC ALLISTER: Okay, great. Thanks.
2 Go for it.

3 MR. HEGARTY: Dave Hegarty, DuctTesters. I've
4 just got two quick comments that I'd like to point out,
5 that I think that QA/QC must not be quantitative, it
6 must be qualitative more of a profile. It needs to be
7 used based on some metrics. And when it gets outside of
8 those parameters is when the QA -- or the QA/QC starts.
9 Most of it can be done in-house with the kind of
10 technology we have today.

11 So, leaving it at that, I would like to make one
12 more comment on the raters, I think the raters must be
13 notified. That's how they learn. So, being notified of
14 QA of any type, we need to be notified so that we can
15 perform at a professional level. Thank you.

16 COMMISSIONER MC ALLISTER: Thank you.

17 MR. COLEMAN: Mr. Chairman, Ralph Coleman with
18 Western Air System Certification.

19 I've sort of jumped the gun on you. I couldn't
20 hear in the back so I moved up to the front where I
21 could hear.

22 And number two, I'd more specifically like to
23 speak about rater companies so I think I'll hold my
24 comments until you get to that agenda item. Thank you.

25 COMMISSIONER MC ALLISTER: Great, thank you.

1 MR. FLORES: John Flores, Valley Duct Testing.
2 I'm the owner.

3 I've got a couple of items I'd like to discuss.
4 When the raters -- I mean, when the providers were up
5 here talking they talked about failures, and multiple
6 failures, and things. I guess I'm a little confused
7 because there's probably between five and eight hundred
8 raters in the state and I spent a little time printing
9 out a report of the failed QAs. And what they list, if
10 a rater gets failed QA it says "this rater failed a
11 random quality assurance inspection within the last six
12 months."

13 Some of these raters that have failed that QA,
14 maybe have been raters for four or five years. Okay,
15 the first QA failure, the CEC requires that the provider
16 list them on the first QA.

17 Out of 500 -- I want to submit this to you. Out
18 of five or eight hundred rates, whatever there is,
19 there's only two QAs in negative or failed QAs in this
20 list. A little confusing how there's only two. They
21 happened to be two of my guys. But there's only two in
22 here so I'm surprised that there's seven or eight
23 hundred raters that are perfect and have never failed a
24 QA, because they should be on this list.

25 COMMISSIONER MC ALLISTER: All right.

1 MR. FLORES: The second thing that we're running
2 into is we're getting calls from -- the QA process is
3 supposed to be a random process by rater, one out of a
4 hundred, they're supposed to -- the rater's -- I mean,
5 the provider's supposed to be going out and doing
6 quality assurance inspections.

7 We're getting calls from builders, telling us
8 that the provider is going out prior to us doing our
9 final inspections and doing ratings. I'm a little
10 confused how it can be a random -- random by rater, in
11 lieu of being a random on a company. And I've got one
12 of the raters with me that have been QA'd in the last
13 three months between three and five times. So, with
14 five to eight hundred raters, how in the world could he
15 have been QA'd five to eight times and never failed one,
16 but he's been QA'd that many times.

17 And I just don't understand why the provider is
18 causing this friction between the builder and the rater
19 by telling them don't tell the rater that we're coming
20 out and they come out ahead of time. I don't understand
21 what those results represent. If they come out and test
22 and we haven't been there yet, how could they -- how
23 could they mean anything, I guess.

24 COMMISSIONER MC ALLISTER: Right. Okay, I
25 guess -- let's see, I don't -- this is a particular case

1 and I want to keep it sort of as -- the conversation as
2 structural as possible.

3 But I might actually ask -- now, you're under
4 CalCERTS, right? So, it might be helpful to sort of
5 have CalCERTS talk a little bit about the tradeoff here
6 and sort of how you -- you know, within the QA context
7 how it is that you end up doing QAs on certain -- sort
8 of what your pattern of QA actually looks like in
9 practice, given the constraints that we've talked about
10 before. So, I guess I want to kind of keep going on,
11 but it might be good to have you sort of think about the
12 answer to that.

13 MR. FLORES: The other thing that I need to
14 bring up, also, is a lot of the rater companies that do
15 a lot of new construction have office staff doing the
16 paperwork, you know, and with the volume of business
17 that some of the rating companies do there's a -- you
18 know, there's a percentage that there could be errors in
19 there. There is no training by the providers -- there's
20 no training by the providers to be able to have some
21 sort of a process to help them.

22 We're pretty much self-taught as a rater and we
23 have to teach our people, in our office, how to process
24 stuff through the registry, which I believe there should
25 be some sort of a training process for people that are

1 going to be accessing that registry.

2 And we actually put together, a couple of years
3 ago, for CalCERTS, a 56-page office manual that I'm
4 going to give you guys, also, that helps with that.

5 But, you know, when you get somebody in there,
6 you're trying to train them the best you can.

7 The other thing -- and I'm sorry, I've just got
8 one more thing I just wanted to put out real quick.
9 This industry that we have is similar to another
10 industry that's been around for years, and years, and
11 years and it's the teaching industry.

12 The teaching industry has principals do
13 evaluations on teachers. They go over the positives and
14 negatives and help them learn how to get to become a
15 better teacher, okay.

16 And I think if we took to heart what -- and the
17 CEC looked at that, you know, I think it gives you good
18 direction on how to put this process together to make it
19 good for us, to make us as raters better. And, really,
20 that's all we want to do.

21 COMMISSIONER MC ALLISTER: Okay.

22 MR. FLORES: And here's another thing that I'll
23 give you guys from an educator/principal.

24 COMMISSIONER MC ALLISTER: Okay, great. Thanks
25 for your comments.

1 Let's see, are there any other raters that are
2 in the audience who want to speak?

3 MR. GOMEZ: Check the WebEx?

4 COMMISSIONER MC ALLISTER: Oh, great, let's ask.

5 MR. GOMEZ: So, if no one else in the room has a
6 comment, Jacki Donner, online, do you have a comment?

7 MS. DONNER: No comments right now.

8 MR. GOMEZ: Thank you. Okay, I think we're --
9 we want to invite anyone else in the audience that wants
10 to contribute to this topic and you already -- you have
11 not gotten a chance to speak.

12 COMMISSIONER MC ALLISTER: Let's see, so
13 builders will be up next.

14 MR. GOMEZ: Yeah.

15 COMMISSIONER MC ALLISTER: And then public
16 comment, I think, right?

17 MR. GOMEZ: Exactly.

18 COMMISSIONER MC ALLISTER: HVAC installers and
19 then public comment, if there are any.

20 MR. GOMEZ: So, is there anyone from the
21 building industry that would like to come up, HVAC?

22 COMMISSIONER MC ALLISTER: Oh, great. Okay.

23 MR. GOMEZ: Okay, we have a person.

24 COMMISSIONER MC ALLISTER: All right.

25 MR. EMBLEM: Good morning, Commissioner.

1 COMMISSIONER MC ALLISTER: Good morning.

2 MR. EMBLEM: Congratulations. I'm Erik Emblem.
3 I'm with the Joint Committee on Energy Environmental
4 Policy and our industry represents HVAC installers and
5 contractors in the State of California, 650 contractors
6 and 25,000 workers.

7 And I, particularly, have a lot of background in
8 setting up certification entities and quality control.
9 And I think on this issue of -- I think this has been a
10 great workshop, by the way, it's great input.

11 But there's two levels of QA I see. There's
12 this internal QA that a provider needs to provide, that
13 his operation is providing a quality service to the
14 raters that are his customers, or the raters are the
15 customer for the provider, and a quality assurance that
16 they're getting that they need to be good raters.

17 But on the other side of this there's some other
18 stakeholders. The very most important stakeholder is
19 the owner, the owner of the building, the owner of the
20 residence that's providing the check for whatever the
21 services are. And it's all encompassing in one
22 contract, but the rater may be a third tier or fourth
23 tier contractor in this process.

24 But in the end, this whole verification process
25 is to verify that that person got what they were paying

1 for and that's that everything has been installed in
2 accordance with the code and the energy efficiency's
3 been obtained.

4 So, that stakeholder group really needs another
5 level of quality assurance. You have the quality
6 assurance of the provider checking on the services that
7 they're providing the raters. Well, who's really -- if
8 there's a customer out here that has a complaint, where
9 do they go?

10 And I would assume maybe to the raters, if they
11 knew who -- I mean, the provider, if they knew the
12 provider. But most of the time it's probably going to
13 go to a building department. It's probably going to go
14 to an authority having jurisdiction over code
15 enforcement, or the contractor who installed it. Right?

16 So, I think that there needs to be a process
17 that's clear to those groups of where do they go with a
18 complaint.

19 And then overall the next quality assurance is
20 for the Energy Commission, itself. And it's a process
21 that the Energy Commission has for licensing providers.
22 What kind of feedback do you get that the system,
23 itself, is working with your providers?

24 And that may be where the Commission, itself,
25 needs some kind of a third-party ex ante assurance

1 review that checks the providers in the process of most
2 of the providers.

3 And I think that that, then, would probably
4 enclose this loop of quality assurance.

5 This industry has come a long way and my hat's
6 off to the providers in the room. I think all of them
7 are trying to do the best they can to enforce the code.
8 I don't think anybody here is bad guys.

9 COMMISSIONER MC ALLISTER: No, absolutely.

10 MR. EMBLEM: I really think that they're trying
11 to do their best and also maintain a profitable business
12 and that's tough in the environment today.

13 But to close the loop I think there needs to be
14 this kind of oversight of quality assurance of the
15 providers, themselves, back to the Commission. And I
16 don't know how you put that together and it should be a
17 pretty rigorous -- I'm thinking of these ex ante studies
18 that come back at the CEC level on the energy efficiency
19 implementations that are done through the IOUs.
20 Something similar that would report back to the
21 Commission.

22 COMMISSIONER MC ALLISTER: Great. Thank you
23 very much.

24 I think we're definitely to hear about
25 technology solutions. I mean, the registries and how we

1 might manage that information in a way that allows more
2 to be done with the existing resources, and really be
3 judicious about how, you know, any additional
4 requirements or any additional infrastructure that we
5 have to build because that infrastructure has to be paid
6 for.

7 But, you know, I agree with the comments so far
8 that we need to make sure that the customer's getting
9 what they're paying for. So, that's what we're here to
10 do.

11 MR. GOMEZ: Yes, sir, please.

12 Please state your name.

13 MR. WALL: My name is Andy Wall, I'm with AC
14 Home Performance, it's my own company.

15 I'd like to thank the Commission to be able to
16 speak today. Just a few comments, I've been in the
17 energy efficiency world for about 33 years now, and I've
18 seen it come and go many times.

19 I do -- my company does diagnostics. I do
20 training for some of the utilities, and private
21 training, and I do a little bit of research.

22 Maybe some significance is that I live in a
23 house that's zero net energy, it's been retrofitted.
24 And kind of some numbers is that since June of last year
25 the utility company owes me \$528, now.

1 COMMISSIONER MC ALLISTER: Congratulations.

2 MR. WALL: And it's going to be more than that
3 as time goes on.

4 But this house --

5 COMMISSIONER MC ALLISTER: If you're here to
6 collect that, you let us know and we'll figure it out.

7 MR. WALL: Electric car's coming.

8 The retrofit on this house would have been very
9 inexpensive when the house was built 25 years ago. It's
10 probably tenfold or more than what it would have cost,
11 probably more than that to actually retrofit it now.

12 So, it's something I would like to see, that we
13 actually fit all houses, especially the new stuff we're
14 building in retrofits.

15 It kind of hurts me to see that the houses that
16 we're building today are not any more efficient, lots of
17 times, than stuff built 20, 30 years ago. So, that's a
18 real problem.

19 And I've seen lots of houses. My wife and I
20 have been through about 20,000 houses, so it's a pretty
21 substantial number, in various states of the country.
22 Not all through Home Performance, but we've been through
23 lots of houses to see lots of problems.

24 I think all of this work should require a Grade
25 A, not just randomly picking and letting all stuff fly.

1 There's lot of stuff without permits pulled, lots of
2 problems out there.

3 I'd like to speak a little bit about training.
4 Training makes us the apprentice and no apprentice in
5 the old world of doing construction was out there doing
6 stuff on their own. They had to become the masters to
7 get there.

8 So, even with all of the training I've had,
9 sometimes I feel a little inadequate out there of what
10 I'm doing. And I am a HERS rater. I guess a rater, I
11 don't know what you call it, the old HERS. I do not do
12 it as a business because I think it's very inadequate of
13 what we're doing.

14 All of the work that's being done out there
15 should be fully commissioned. Just as something like a
16 shipbuilder or automakers do, they commission stuff.
17 They make sure it works, there's feedback at all of the
18 critical stages to make sure it works. And our houses
19 should be the same way.

20 And to give you an idea of my house, more than
21 the utility bill, it's less than two degrees second
22 floor to first floor, room to room. It's pretty
23 incredible.

24 So, if I may, just a couple of short things.
25 Saving money up-front costs us a lot more later on.

1 Cost-effective, I don't think we really know what that
2 word means or that phrase means.

3 COMMISSIONER MC ALLISTER: Uh-hum.

4 MR. WALL: And any job that's done wrong and not
5 and corrected the consumer pays for the life of the
6 product. Thank you.

7 COMMISSIONER MC ALLISTER: Thank you for your
8 comments. I would actually encourage you to participate
9 in the AB 758 discussions that we're having here,
10 separate from this OII, but implementing the bill to
11 figure out ways of implementing the design and action
12 plan to place foundational resources and programmatic
13 approaches that can radically scale up the upgrading of
14 existing buildings, and how to do it with the proper
15 quality and, you know, make sure that it's done well.

16 One of the things we're going to talk a lot
17 about is how to improve the permitting process and code
18 compliance for existing building upgrades. So, it
19 sounds like your extra knowledge and experience would be
20 very well utilized in that arena and it would be great
21 if you could participate.

22 MR. GOMEZ: Commissioner, there's one comment
23 online that I want to get to.

24 COMMISSIONER MC ALLISTER: Okay.

25 MR. GOMEZ: Eric Taylor? Eric Taylor?

1 MR. TAYLOR: Thank you very much. Can you hear
2 me okay?

3 MR. GOMEZ: Yes. Please state your name?

4 MR. TAYLOR: My name is Eric Taylor from the
5 Enalasy Corporation, and I'm certified by the
6 California Energy Commission as a third-party quality
7 control program.

8 I just would like to make a quality assurance
9 comment for the Commission to potentially take into
10 consideration. There's emerging technologies that are
11 occurring. One of those technologies is a benchmark
12 using circuit meters to benchmark homes and businesses,
13 going down to the circuit level and doing circuit
14 benchmarking in conjunction with the HERS processes. I
15 think it would be a good opportunity.

16 We're piloting a program, currently, in the
17 Imperial Valley in where we benchmark the house with a
18 circuit meter, very low circuit meter, down to the
19 circuit level and as weatherization is done we are
20 taking measurements. As air conditioning upgrades were
21 done we're taking measurements, all the way to solar
22 taking measurements so that we can see down at the
23 circuit level that each component or measure that was
24 implemented in the home actually occurs.

25 And I think if we did this in conjunction with

1 what's already being done with mobile diagnostics, it
2 would give us more of a data point that the processes
3 are working in the marketplace.

4 And it's just a comment. I don't need any
5 comment back, I just wanted to make that statement to
6 the Commission. Thank you.

7 MR. GOMEZ: Thank you, Eric.

8 Okay, before going forward, I'd like to point
9 out that Commissioner Douglas has joined us and I want
10 to give her an opportunity to make any initial comments.

11 COMMISSIONER DOUGLAS: Thanks, Pedro. I don't
12 have any opening comments. I'm glad to see this great
13 turnout.

14 MR. GOMEZ: All right. So, just to do a time
15 check, we're about 22 minutes behind. But I thought
16 that this first topic was one that we were probably
17 going to use more time than we allotted and I think the
18 afternoon, or the later topics I think we could probably
19 use less time. So, we are behind, but I think we're
20 okay.

21 So, with that said, if there are no other
22 comments on this topic in the room, or online, I'd like
23 to move to the second topic.

24 The second topic is HERS Rater Disciplinary
25 Process.

1 Commissioner.

2 COMMISSIONER MC ALLISTER: So, let's -- you can
3 all read the agenda so let's --

4 MR. GOMEZ: Well, we'd like -- we would like the
5 providers to come back up to the table, please.

6 COMMISSIONER MC ALLISTER: Yeah, the providers
7 can come on up and we'll --

8 MR. CHARLES: I have a comment, if that's okay?

9 COMMISSIONER MC ALLISTER: What's that?

10 MR. CHARLES: This is Don Charles. I just had
11 one last comment. I just wanted to thank the raters for
12 their comments. I think that they were very valuable
13 for many of the raters that spoke on the last topic and
14 I think it lends itself to the fact that most of those
15 guys, I believe, like the providers, want to do a better
16 job.

17 And again, I just want to reinforce that I think
18 that the QA process does lend itself very nicely to
19 helping facilitate the improvement of these processes
20 and to helping raters do a better job at what they do.
21 So, I applaud many of the rater comments that were made.

22 COMMISSIONER MC ALLISTER: Thanks Don.

23 Okay, so should we mix it up and -- well, do you
24 want to start with CHEERS first this time.

25 MR. MEYERS: This is David Meyers with CHEERS,

1 again.

2 The first question regarding rater disciplinary
3 process; "Should decertification of a rater by one
4 provider limit that rater's ability to become certified
5 with another HERS provider?"

6 CHEERS' position is that we don't support a
7 mandatory decertification across all providers,
8 primarily because we've gone through a pretty extensive
9 process with the CEC --

10 MR. GOMEZ: Dave, can I get you to speak into
11 the mic, please?

12 MR. MEYERS: Sorry. We've gone through a pretty
13 extensive process with the CEC to have our QA, and
14 corrective action, and disciplinary process vetted, and
15 we take great pride in the fact that we allow the
16 raters, when we do have what we call class two failures,
17 which are -- we have class one and class two. Class one
18 failure in our process is essentially the rater made a
19 mistake and there might be a training issue.

20 Class two is a little more serious nature where
21 we feel like there's an integrity issue. There may be
22 fraud and things of that nature.

23 So, in our process we allow the rater ample
24 opportunity to do some fact-finding on their own and
25 come back to CHEERS to present their position.

1 So, my point is that we don't necessarily
2 want -- wouldn't want to rely on any other providers'
3 process because it hasn't been standardized across the
4 industry to allow them to either decertify or not allow
5 a rate to be certified under our umbrella. We prefer to
6 evaluate the rater based on our process and make that
7 decision as a business.

8 COMMISSIONER MC ALLISTER: Do you think that
9 there is value to having a standardized process more
10 explicit in the regs?

11 MR. MEYERS: Absolutely. You know, especially
12 as more providers, potentially, enter the industry that
13 would help eliminate a lot of confusion across the rater
14 base, certainly --

15 COMMISSIONER MC ALLISTER: Uh-hum.

16 MR. MEYERS: -- to know that they're going --
17 they know the process. It doesn't matter which provider
18 they're with, that here's how they're going to get QA'd
19 and if there's a problem, that they fail, they know
20 exactly what the process is and the timelines as far as
21 how they can address that failure so, certainly.

22 COMMISSIONER MC ALLISTER: Uh-hum.

23 MR. MEYERS: I think that's primarily the only
24 comment I had at this point.

25 COMMISSIONER MC ALLISTER: Great.

1 MR. MICHAEL BACHAND: Thanks, this is Mike
2 Bachand.

3 We looked at this question as kind of out of
4 order form the agenda but since they -- since CHEERS was
5 addressing it, I'll address it directly right now, too.

6 What we looked at was what does the CEC want a
7 HERS rater to be in the eye of the consumer and in the
8 industry? And this speaks to if all HERS raters are
9 expected to know the same things and they're expected to
10 adhere to the same QA rules and things, then we would
11 think that the provider in that instance is sort of a
12 secondary actor. The HERS rater should have the same
13 qualities no matter what provider he comes from and so
14 forth.

15 So, we look -- I would say my answer is yes, if
16 there are -- you know, should one provider -- if a
17 provider decertifies somebody, should the other
18 providers, let's say, honor that?

19 My answer is presuming that continuity is in
20 place in terms of what providers are supposed to be
21 doing with the guidelines from the regs that we've
22 talked about before about what constitutes a failure and
23 so forth.

24 COMMISSIONER MC ALLISTER: Uh-hum.

25 MR. MEYERS: So, properly designed and put in

1 place, the answer is yes.

2 The high level question to me is what do we want
3 a HERS rater to be perceived as? Oh, he fails on one
4 guy, well, he's over at the other guy's now, so what
5 does that tell the building department and the consumer?

6 I mean, I'm not saying what it tells them, I'm
7 asking what it tells them. building department and the
8 consumer?

9 COMMISSIONER MC ALLISTER: Yeah.

10 MR. MEYERS: It needs to be a part of this
11 consideration.

12 If one provider decertifies on ethical faults,
13 under what justification could another provider say, oh,
14 well, you know? So, the tier one and the tier two that
15 they talk about is -- we haven't defined it that way,
16 but that's the way our actions have been.

17 And so certain ones -- maybe a one is not de-
18 certifiable across the board, but if a two is then these
19 are the things that I think are important to the
20 discussion.

21 COMMISSIONER MC ALLISTER: Great, thanks.

22 COMMISSIONER DOUGLAS: So, just as a quick --
23 just as a quick follow-up question on that before you go
24 on, you know, for CHEERS, how would you respond to that
25 question? You know, the question on the table is, okay,

1 one provider has decertified a rater and you hire that
2 rater, conceivably, you know, hypothetically, so -- so
3 how is that portrayed in the marketplace and what kinds
4 of vetting or work might you either propose to do or,
5 you know, what processes might you follow in that
6 instance?

7 MR. MEYERS: Well, how it's necessarily
8 portrayed -- sorry, this is David Meyers with CHEERS,
9 again.

10 How it's necessarily portrayed in the industry I
11 don't necessarily know. But again, how -- if a provider
12 decides to decertify a rater, I'm not intimately
13 familiar with CalCERTS' or any other provider's QA and
14 disciplinary process. So, therefore, I'm not
15 comfortable taking another company's word or evaluation
16 at this point.

17 So, I would want to evaluate that rater, look at
18 all of the evidence, give that rater the opportunity to
19 present his or her case and then make a thoughtful
20 decision on whether or not CHEERS would elect to move
21 forward with that rater.

22 COMMISSIONER MC ALLISTER: Do you, and this is
23 to both of you and to Don, potentially, do you see value
24 in having this sort of two tier where there's different
25 classes of kind of issues and some of them could,

1 potentially, be sort of a non-starter and others could
2 be sort of -- I mean, even multiple, sort of non-ethical
3 failures would not necessarily disqualify from another
4 company.

5 Just trying to get a sense of sort of what
6 the -- you know, the question you posed is. You know,
7 if there's a serious breach of the type that sort of
8 makes you doubt, oh, gosh, you know, is there any remedy
9 here at all should that be part of the consideration in
10 defining whether people are eligible for another company
11 or just not eligible at all.

12 MR. MEYERS: Yeah, that's a great question.

13 This is David Meyers with CHEERS, again.

14 We actually, when we developed our process and
15 documented it, one of the things that we did is we sat
16 down with stakeholders, key rating companies and said
17 here's how we want to evaluate the QA process. We were
18 thinking of class one failures being this type of
19 failure, or class two being this type of failure.
20 Here's the type of process that we want to have in place
21 if we do find either one of these failures.

22 We had a lot of great feedback from the rating
23 community before we finalized that process and submitted
24 it to the CEC as part of our application process. So, I
25 think there's great value in that.

1 MR. CHARLIE BACHAND: I have something to add,
2 if I may. My name is Charlie Bachand. I'm the Director
3 of QA from CalcERTS, again.

4 I believe that it's extremely important to
5 differentiate between technical failings and ethical
6 failings on the part of raters. If there is something
7 that they have done, perhaps even repeatedly, as a
8 result of incompetence, or education, or simple
9 misunderstandings then I would be prepared to treat that
10 differently both in our own providership and across
11 multiple providerships than I would ethical concerns.

12 If a rater is truly committing fraud, if they
13 have been caught in deliberate lies, I believe that they
14 should be decertified, one. And two, I believe that
15 other providers should not continue certifying them or
16 allow them to be re-certified.

17 And to touch on a point that David made, we,
18 too, have a QA process that's been vetted by the CEC,
19 just as they do. And to my mind, if a provider that has
20 been vetted by the CEC and has an approved QA process
21 determines that somebody has acted unethically, then it
22 seems like it should be more or less not questionable by
23 the other providers that that's the case.

24 There are other ways of addressing that in the
25 case of appeal or 1230 complaints with the CEC, itself.

1 But if we see through our approved process that
2 somebody has committed fraud, how can somebody else
3 support taking that rater on? That's my closing
4 question.

5 COMMISSIONER MC ALLISTER: Thanks very much. I
6 guess, I'm sure there's some legal issues that,
7 obviously, we have to put the -- you know, put that lens
8 on to sort of work through what is appropriate to define
9 in the regs, but I think these are really important
10 issues to get on the record. And it sounds like we've
11 got rough alignment between you two.

12 I'm wondering if Don Charles has any additional
13 comments.

14 MR. GOMEZ: Don?

15 MR. CHARLES: Yeah, hi, this is Don Charles.
16 This is Don with USERA.

17 You know, I tend to kind of be right there in
18 the middle. I'm not in, per se, full agreement, but I'm
19 also not in disagreement with what both the other
20 providerships had to say on the matter.

21 I think there does need to be some standards put
22 in place that go across all companies. My thought would
23 be that, just initially and this is not a completely
24 fleshed out thought, but if a rater is in question for
25 decertification that that's where I possibly see where

1 the independent QA process could come into play at the
2 CEC level to then get involved.

3 So, in other words, as a providership we kind of
4 throw up a red flag and say, hey, CEC, we've got some
5 violations that we believe are happening here, could you
6 provide an extra level of QA for us and help us make the
7 determination, based on that independent standard. If
8 we raise the red flag, are we correct in our assessment
9 here?

10 And then a higher level process occur for either
11 saying, well, we think this is a training issue and/or
12 we think, no, this is an ethical issue, some
13 decertification should take place.

14 But the CEC, as the standard bearer overall,
15 makes that final determination.

16 You know, that would be my kind of thought. But
17 I agree that, you know, if one -- if a rater is, in
18 fact, decertified, per se, for legitimate reasons and
19 that I don't necessarily feel other providerships should
20 be able to take them on unless, maybe, an extensive
21 process of re-certification is gone through, again,
22 which standards could be created to do.

23 But I tend to -- you know, I'm right there in
24 the middle with both of those guys. I can certainly
25 understand all of the points that are being brought to

1 bear there. And, you know, I think my thought is that
2 there be some standardization of the standards, that
3 everybody agrees to, and that the agreements be in place
4 where the raters understand what they are signing on to,
5 that the QA process be standardized as such that there's
6 a violation that then it goes to that final judgment
7 level where the CEC is invited in to that final QA
8 process to make a determination of whether or not, in
9 fact, there was a failure or not, and then help in the
10 rendering of a judgment in that process.

11 And Greg, I think Greg Davis would also, on my
12 team, would like to add to that, if possible.

13 COMMISSIONER MC ALLISTER: Sure.

14 MR. CHARLES: So, can I have Greg Davis chime
15 in?

16 COMMISSIONER MC ALLISTER: Go ahead.

17 MR. DAVIS: Hi, I'm Greg Davis. I am a HERS
18 rater, co-certified with USERA and with CalcERTS.

19 And my comment is that there's a couple of
20 raters probably out in the audience who can tell me what
21 blueprint it is, but the blueprint did come out under
22 code and state that if a rater's been decertified by one
23 provider they should be decertified or they are not to
24 be certified by any other providership.

25 That has not been enforced. I actually support

1 that not being enforced until we have across-the-board
2 thresholds that need to be met with all providerships on
3 a QA process or a level of disciplinary action. I
4 support Don in elevating anything to decertification
5 should probably be reviewed by the CEC. And that way it
6 would support the decertification of that rater across
7 all providerships.

8 Currently, under Title 20, when there is a
9 failure by a rater the other providers are to notify the
10 other providerships of a rater's failure so that if they
11 are co-certified that we have to raise them to the two
12 percent rate.

13 But the transparency isn't necessarily there to
14 know what level brought it decertification, nor is it
15 necessarily up to that providership making that
16 determination to be that transparent, other than the
17 fact that they decertified.

18 So, until we raise it to a CEC level it puts
19 just too much onus or responsibility, and definitely
20 liability for a providership to automatically decertify
21 a certified rater just because another providership did
22 the decertification.

23 And that is my comment.

24 COMMISSIONER MC ALLISTER: Thank you.

25 MR. MICHAEL BACHAND: May I make a comment?

1 This is Mike Bachand.

2 COMMISSIONER MC ALLISTER: Absolutely.

3 MR. MICHAEL BACHAND: Not to get into arguments
4 and things, but we have honored CHEERS' decertifications
5 and I believe CHEERS, old CHEERS honored some of ours,
6 but that's just a small point.

7 The other point I wanted to make is that the
8 decertification is not the same as not certifying
9 someone. If a rater's been decertified at a provider,
10 then the other provider is not saying yes or no about
11 decertifying that person, they're saying, look, you
12 can't come in. I'm not saying you're bad, the other guy
13 said you're bad.

14 So, the argument is not always about
15 decertification, it's about -- okay, and maybe there are
16 some remedy trainings. Greg suggested maybe some remedy
17 trainings that a decertified could do would be helpful.

18 COMMISSIONER MC ALLISTER: Uh-hum.

19 MR. MICHAEL BACHAND: We didn't spend a lot of
20 time thinking about that. But there's a lot of issues
21 in this and this is another one of those areas that's
22 kind of hard to answer without full thoughts.

23 We don't want to reinvestigate all of our people
24 for someone else. They want to know, well, what did
25 this guy do? Well, I already spent a lot of money

1 figuring out what he did and so I'm not really fond of
2 going through that again, so there's a lot of issues on
3 it.

4 COMMISSIONER MC ALLISTER: Right. Well, it
5 seems like the sort of topical issue is having to do
6 with standardizing the process in some way that's
7 functionally workable.

8 MR. MICHAEL BACHAND: Certainly.

9 COMMISSIONER MC ALLISTER: And so I think we can
10 kind of go from there. And it seems like we have some
11 consensus about that and we maybe -- the devil's going
12 to be in the details, obviously, so maybe we can kick
13 this off to -- unless there's staff that has additional
14 questions about this.

15 MR. GOMEZ: I'd like to maybe, because I don't
16 think we've really addressed that last, the second to
17 the last question which is "should the disciplinary
18 decision be overseen by an independent group?" I mean,
19 I didn't get a clear answer. Are you against it or for
20 it?

21 And if you're for it, who should be the group
22 representing -- you know, be represented on that board?

23 MR. MEYERS: This is David Meyers with CHEERS,
24 I'll be brief. No, we're not for that. So, we would
25 definitely want to have that oversight as a HERS

1 provider.

2 MR. MICHAEL BACHAND: Mike Bachand. We are in
3 favor of it given certain conditions are met. And I
4 think as we've vetted or we've talked about most of
5 those right now, again, your comment, the devil's in the
6 details. Properly done it could provide fairness for
7 the rater and it could provide fairness and protection
8 for providers.

9 One of the things that this could really do,
10 again, because of the cost of doing all of this, could
11 really help on the complaint side, in addition to the
12 QA, which we don't want to -- I know this is about QA,
13 but we need to probably consider all things that can
14 cause sanctions on raters.

15 And so, a properly constituted committee of
16 stakeholders, peers in the industry, with redacted
17 information, that could look at a -- here's a file, I
18 don't know who it is, I don't know what provider it's
19 from, it's coded. This is the allegations, this is the
20 facts, what's the decision? We could work -- we would
21 like to at least explore that option.

22 That's my comment.

23 COMMISSIONER MC ALLISTER: Thanks.

24 MR. CHARLES: This is Don Charles. I'm not in
25 favor of independence at the QA level as far as a QA

1 company. I am in favor of standardization of the
2 process for all providerships.

3 And then I am in favor of a failsafe tier being
4 provided at the CEC level where if a providerships
5 raises a red flag, that then the CEC can get involved to
6 actually see if what the provider is suggesting is
7 saying, that they are that extra level of failsafe to
8 see what the providership's audit bore out, that that is
9 in fact true. And then the CEC making the determination
10 as to what happens with the rater's status.

11 COMMISSIONER MC ALLISTER: Thank you. Yeah,
12 let's move things along here. So, thanks, guys. Thanks
13 very much.

14 MR. GOMEZ: We invite raters to please switch
15 seats, please.

16 Just to give you a heads up, we're about four
17 minutes away from being time up on this one, so we want
18 you to make your points quick and keep within that
19 three-minute timeline, please.

20 MR. AMARO: Alan Amaro, HERS rater. This is a
21 subject that really drives my blood pressure up for the
22 simple fact of it is that if you leave the provider with
23 the right to do a decertification that makes them the
24 judge, the jury, and the prosecutor. You have no third
25 party, independent person overseeing that. And this has

1 happened many times.

2 Now, is the provider always right? No. Is the
3 HERS rater always right? No.

4 But the difference is, the simple fact of it is
5 that we're doing State business, we're not doing private
6 business, and there's certain standards that the State,
7 you know, has, and we're not even following those.
8 We're not following Public Contract Code, we're not
9 giving people due process.

10 And to allow a provider to make arbitrary
11 decisions based upon the fact that they want to believe,
12 that they want to see, that they want to prove does not
13 do justice to the American way of law, to the law. It
14 does not do it.

15 We need a third party, independent that could
16 overlook not only the HERS rater and the provider, but
17 overlook what's good for the State of California.

18 In many -- in several cases, the provider has
19 made these arbitrary decisions without backing it up,
20 they just get to say it. They just get to say we're the
21 only game in town, therefore, we can make any decision
22 we want. And that's happened and we don't want that to
23 continue.

24 Everyone has a right to do business, to provide
25 for their families. We're not allowing them to do that

1 when we allow one person to make a life or death
2 decision, if you want to put it that way.

3 I implore, I really would like to see the
4 Commission explore that third party because I think
5 there is an element of fairness, there a person can get
6 his day in court. You can't get it now, they can just
7 make their decision and away they go. And it only costs
8 the person on the end that's getting decertified. Thank
9 you.

10 COMMISSIONER MC ALLISTER: Thanks very much.
11 I'll -- so, thanks for your comments.

12 Well, let's move on and get -- and then we can
13 have a little dialogue here.

14 MR. FLORES: John Flores. I'd like to respond
15 to this. As far as the -- probably the most difficult
16 thing with a rater and getting QA'd is not knowing what
17 the provider is looking for.

18 The CEC has developed protocols, but they're
19 very gray, there's a lot of open for interpretation of
20 them.

21 If we had the QA process and protocols for the
22 providers, we would have a better understanding of what
23 was acceptable and what wasn't acceptable, but because
24 we don't have that, we do our best to interpret the
25 rules, do the testing, and then the providers come out

1 and QA the process in their interpretation of the rules,
2 which makes it very difficult.

3 I think that if that was -- if each provider had
4 their set of protocols, some of them are going to
5 have -- it's going to be a little bit different. But if
6 we understood what that was, it's very easy to follow
7 the rules if we know what we're supposed to be being
8 QA'd on.

9 Regarding the third party, I'm in disagreement
10 with that. I think that, you know, there's going to be
11 raters that are going to be under multiple providers and
12 I think that the simplest way to do it would be if a
13 rater was to get to a certain point where they were
14 going to get decertified by a particular provider, that
15 a committee of the three providers got together and
16 looked at all the data regarding that and make a
17 consensus there; you've got three providers and if the
18 CEC wants to have representation on that committee.

19 But to get a third party out that really doesn't
20 have a full understanding of the industry, I think those
21 three providers probably could make that best decision
22 and they could sound off each other.

23 And if they -- if that rater really deserved to
24 be decertified, then they should be decertified.

25 But if one provider feels like the other

1 provider didn't give them, you know, fair justice, you
2 know, or they were interpreting what the rater thought
3 they were doing instead of interpreting actual facts, I
4 think it would make it easy for the providers to be able
5 to work together on that.

6 COMMISSIONER MC ALLISTER: So, you just laid out
7 a potential structure for some review panel on this
8 issue of decertification.

9 Any additional -- so, and you suggested that
10 maybe the CEC be on it.

11 I guess I would ask do you think there ought to
12 be rater representation on it?

13 MR. FLORES: I don't believe so because, you
14 know, it would be very difficult to put a rater on there
15 that maybe is a competitor of another rater. You know,
16 I mean, sure, would I like to be on something like that?
17 Yeah, but I don't think it would be fair to the other
18 rater community on there.

19 I think the providers could do a good job on it
20 and I think that it should be within the providers, you
21 know, because --

22 COMMISSIONER MC ALLISTER: Thanks.

23 MR. YOUNG: Yeah, Tommy Young, E3 NorCal. I
24 actually brought the page from the blueprint, it's
25 number 94 from 2010.

1 And just a quick question, are we, as raters,
2 supposed to interpret blueprint as code? If something
3 is said in blueprint should we take that -- for example,
4 because you put out things that say you must do
5 refrigerant charge tests, you'll do updates.

6 MR. GOMEZ: So, Tommy, I don't think it's code,
7 I think it's an advice on --

8 MR. YOUNG: Okay, because --

9 MR. GOMEZ: We're trying to provide
10 clarification when questions come to us.

11 MR. YOUNG: Okay, because that would help a lot.
12 So, in this it was said, basically, that a HERS rater
13 got decertified for one job. The DA was brought in, the
14 Sutter County Building Department. And then it was
15 written that "this is a reminder to all HERS rater that
16 it" -- and this is in bold print -- "it is a felony to
17 submit falsified documents to a government agency. HERS
18 raters who are decertified by a provider for fraudulent
19 activity cannot be certified by another provider and
20 providers are made aware of any decertification."

21 So, at different times I've written and said --
22 asked for a retraction because it's obviously not true.
23 And, again, technical failures, it happens, we all make
24 mistakes. Ethical failures are the things that drive me
25 crazy because if a provider knows that someone has been

1 decertified for an ethical failure that means that's
2 fraud and perjury.

3 So, as a provider, I think they have some sort
4 of responsibility to ensure that gets prosecuted or sent
5 to someone.

6 I have rater employees who I tell, if you so
7 much as steal a stick of gum from someone's house, I
8 will do whatever it takes. You know, I'll call the cops
9 on you.

10 So, it frustrates me that when there are ethical
11 decertifications it's obviously not perjury, it's
12 obviously not a felony because it's just don't do it
13 again, goodbye.

14 And that's all I have to say, thank you.

15 COMMISSIONER MC ALLISTER: So, do you think some
16 kind of standards could help remedy that? Some sort of
17 more explicit standards could help remedy that?

18 MR. YOUNG: I think at the end of every CF4R it
19 lists these things that you sign under threat of
20 perjury. That's pretty clear to me every time I sign
21 them. I don't understand -- I don't know how they could
22 become any more clear.

23 COMMISSIONER MC ALLISTER: Yeah.

24 MR. YOUNG: But, you know, it's a paper tiger,
25 there's no teeth at all there so you might as well just

1 rubber stamp it because nothing's going to happen to
2 you.

3 COMMISSIONER MC ALLISTER: Thanks for your
4 thoughts.

5 MR. BERIAULT: Good morning, my name's Eric with
6 EnerGuy. Thanks for the opportunity to speak.

7 I'm going to address points three and four. So,
8 I guess my answer to those are yes and no. It's a yes
9 provided that, you know, all the providers are using the
10 same playbook. And if that's the case, then I agree.

11 As for points five and six, the independent
12 group, I really caution adding an additional layer. If
13 everyone's using the same playbook, it may not be
14 needed.

15 One of the -- you know, in our business what
16 we're trying to do is we're trying to simplify the
17 process for our customers, so this goes against what we
18 strive to do so that's why I really caution adding that
19 extra layer. Thank you.

20 COMMISSIONER MC ALLISTER: Thanks for your
21 comments.

22 MR. LILLY: Bill Lilly with California Living
23 and Energy.

24 We do ratings all over the State of California
25 and we've gone through this process of QA. And CalcERTS

1 and I, we've had many disagreements over the past
2 several years.

3 And one of my raters was put on probation. Now,
4 I disagreed how that was handled, how it was processed,
5 but I tell you I do know -- maybe, too, some attendees,
6 I believe that Mike Bachand did it as honestly as
7 possible. He did it with as much integrity as possible.
8 So, I disagree, but that's something we'll deal with
9 later.

10 But as to both providers, CEC set up this
11 program. It works. If you tell somebody they have to
12 have certain ground rules they have to utilize, then
13 they have to do that no matter what provider it is.

14 COMMISSIONER MC ALLISTER: Uh-hum.

15 MR. LILLY: For example, I was involved in
16 finding out this one rater was doing drive-by audits for
17 EEMs. That's illegal. You don't do that. They lied.

18 All providers should step up and honor
19 decertification that CalCERTS did in this specific
20 instance.

21 So, I would agree with CalCERTS in this instance
22 that you have to be able -- to provide any integrity,
23 for you guys to have any integrity, you have to have
24 somebody that lies, cheats and steals never to come in
25 this industry again.

1 And so, I'd have to say I agree with what Mike
2 Bachand stated.

3 COMMISSIONER MC ALLISTER: Thanks very much for
4 your comments.

5 MR. NESBITT: George Nesbitt, Environmental
6 Design Build.

7 Just last week we HERS raters got slammed by the
8 home performance contractors yet, again. We got slammed
9 by the HVAC industry, the insulators. Whenever we fail
10 someone, you know, a lot of raters have been yelled at.
11 You know, we're accused, we don't know what we're doing,
12 we're incompetent, so on and so forth.

13 So, it's important that HERS raters are viewed
14 as having integrity, knowing what they're doing.

15 And so, decertifying bad raters should be good
16 for good raters.

17 Title 20 does specify a disciplinary process.
18 If you fail QA, you're supposed to have more QA, just as
19 when we fail contractors on sampling. You fail one, we
20 got to test another. You fail that, we've got to test
21 everything.

22 But we need consistency between providers, just
23 as we need with QA. It needs to be consistent across,
24 Title 20 needs to be probably more explicit, especially
25 when it comes to decertification.

1 I think that at the moment to say that if you're
2 decertified by one provider you absolutely can't be
3 picked up by another provider, I don't think we should
4 absolutely do that at the moment.

5 I do think we potentially need to have an
6 independent group. And to me, that would include
7 raters, providers, the IOUs, program administrators,
8 contractor associations to review.

9 I know the CEC rule; they're not a State actor.
10 They don't want raters coming and challenging the
11 providers. You don't want to do it because if you do
12 it, obviously, you are the State actor.

13 I mean, this group could include CEC. The idea
14 would be that this would be an independent group that is
15 not emotionally involved in the immediate issue and has
16 a little bit more objectivity to review things.

17 Because I certainly know raters who have been
18 told by providers that they are believed to be
19 unethical, so what we don't want is people being
20 decertified for arbitrary, you know, reasons.

21 So, if we're going to decertify someone, I think
22 it would be good if we have some review.

23 Now, whether you have the authority then to
24 overrule the provider, or whether you just make a
25 recommendation back, and whether the provider still has

1 the ultimate choice, you know, obviously, details.

2 COMMISSIONER MC ALLISTER: Thanks very much.

3 MR. LILLY: Can I make an additional comment?

4 Bill Lilly with California Living.

5 I'd like to add a comment -- well, two comments.

6 I do know like CHEERS, and Mike Hodgson for a long time,
7 and I do believe he would make -- I would -- if he
8 decertified somebody, I would trust that it was an
9 honest decertification and that it -- if I was CalCERTS,
10 I would honor that, also.

11 Now, going forward -- going backwards, we have a
12 situation where like we cannot relive the past the way
13 it is. What decertifications and probations, no matter
14 how I may be upset about how my guy was treated, we need
15 to leave that in the past. It's done. If somebody's
16 been decertified, keep him decertified.

17 Now, we can change things going forward. We can
18 make it better, maybe more equitable. That's the issue
19 we need to discuss as this plays out.

20 But going back, there's been so much time,
21 effort and lawyers going on stuff that's happened in the
22 past, you need to leave it in the past.

23 COMMISSIONER MC ALLISTER: So, I totally agree.

24 I guess, you know, what we're here to do today -- you
25 know, trust and the structure of the industry go hand in

1 hand. I mean, you know, it's great that like the
2 manifestation of trust in the providers, in both -- in
3 your experience with the providers is great to hear.

4 And I think, you know, at the same time we have
5 to structure the program, I think, structure the rules
6 such that it encourages -- so that even if we do have,
7 you know, issues, that the rules are clear and we can
8 sort of make sure that when people violate those rules
9 it's clear that that's actually happening.

10 So, I think having that structure in place
11 reinforces the trust in a way that's -- you know, once
12 that's established and it's more mature down the road in
13 a few years it can actually -- those two things really
14 do self-reinforce. So, then we have an opportunity to
15 have a more sustainable, long-term industry, I think.

16 So, that's kind of the approach that I'd like to
17 frame this with.

18 MR. FLORES: John Flores, one more quick
19 comment. I think the dilemma that's going to happen
20 if -- not getting all three providers together is having
21 one rater that's doing a great job with one provider and
22 they get QA's with a failed QA, and they get --
23 ultimately, get to a point where they're decertified
24 with another, you know, I think there's going to be that
25 dilemma. It's going to happen. But if all the

1 providers are together, they can work together on that.

2 COMMISSIONER MC ALLISTER: I think that's a
3 promising suggestion so I'd like to sort of make sure
4 that we pursue that.

5 MR. YOUNG: Can I throw one question out there
6 for the HERS providers, since they're in that position,
7 and that is how many people have been decertified for
8 technical failures of QA?

9 COMMISSIONER MC ALLISTER: I mean, I think
10 CalcERTS has to answer that.

11 MR. MICHAEL BACHAND: Zero.

12 COMMISSIONER MC ALLISTER: Okay, so at some
13 point before the day's out I'd like to kind of talk
14 about sort of when QA happens and what happens after
15 that QA to remedy. Because, certainly, you don't have
16 zero failures, so what happens to remedy. I think
17 that's a -- we don't have to have that discussion right
18 here and now, but I think we ought to keep that in mind
19 that we want to talk about that.

20 MR. SELBY: Brian Selby with Benningfield Group.
21 I first want to qualify this that I'm not a lawyer or an
22 attorney, but just speaking from personal experience.

23 COMMISSIONER MC ALLISTER: Wait, so you're going
24 to give us tax advice, right?

25 (Laughter)

1 MR. SELBY: Exactly. No, if I'm not mistaken,
2 the certification of a rater is based on a contractual
3 agreement between the provider and the rater. You know,
4 it's based on meeting certain performance requirements,
5 as well as agreeing to meet certain ethical obligations.

6 Now, there are obligations on both sides. The
7 provider is providing training, he's providing quality
8 assurance, he's providing a registry, among other
9 things.

10 Now, a rater is supposed to, when they sign
11 their rater agreement, that they're meeting all these
12 conditions set forth in this contract.

13 Now, when somebody doesn't perform, when a rater
14 doesn't perform, this isn't an issue with the Energy
15 Commission, this is a breach of contract issue. This is
16 a legal issue.

17 In the regular world when you have a breach of
18 contract and it's pushed to the court level there's a
19 mandatory, what is it, arbitration, and that takes it to
20 an outside, unbiased person that can judge -- make a
21 judgment on the ruling.

22 Now, whether that arbitrator is the Energy
23 Commission, or a panel of people put together, or a
24 complete outside arbitration company that would come in
25 and do that, I think, you know, contractually that has

1 to happen.

2 You know, we're dealing with a contract
3 agreement issue. It's not across -- a HERS provider
4 issue. I think if we start stepping into that ground
5 that if a rater's decertified for ethical reasons or
6 breach of contract from one provider, and another
7 provider will not accept him because of that, I think
8 we're kind of on shaky ground. There's some legal
9 issues there.

10 And again, I'm not a lawyer. This is my opinion
11 from personal experience.

12 MR. AMARO: Allen Amaro, again. I just want to
13 interject one thing, I had about 20 second left. What's
14 ethical to one person may be unethical to another
15 person.

16 COMMISSIONER MC ALLISTER: Uh-hum.

17 MR. AMARO: And when you allow one person to be
18 the judge, jury and prosecutor, and those two people
19 that are dealing with each other have some serious
20 conflict of interest or just conflicts, and you allow
21 that one person to be the judge, jury and prosecutor
22 you're not going to get justice.

23 That's why we need a third party. That's why we
24 really need to review it and we make sure before,
25 because you're taking somebody's livelihood away from

1 them, and that's a serious, serious thing to do. Not
2 for some people, some people can make those arbitrary
3 decisions and sleep real well at night, and others not.
4 I would not be able to sleep without being able to be
5 given the due process and know that I've had every
6 opportunity to defend myself, rather than leave it to
7 the hands of an individual that doesn't have the same
8 moral characters as others.

9 So, I'm very serious about it, you can tell by
10 my tone. Thank you.

11 COMMISSIONER MC ALLISTER: You're passionate
12 about it. Thanks very much for your comments.

13 MR. FLORES: One last comment from me. Like
14 Brian was saying, we sign a contract as a HERS rater to
15 meet certain requirements. The obligation of the HERS
16 provider is the one that gives us that contract and they
17 have requirements that they put -- that they're put on
18 by the CEC.

19 If we're going to get scrutinized for doing our
20 job not correctly and get decertified, and get QA'd with
21 failed QAs, why is there not some system set up to
22 require the providers to do their job, also, which at
23 this point they pretty much can do what they want to do.

24 MR. NESBITT: Yeah, this is George Nesbitt. I
25 think in a lot of ways we, as raters, have a lot of

1 responsibilities, obligations, and contracts, and this
2 at us, and at times it seems disproportionate because we
3 see a lot of things that aren't being done at the
4 provider level, at the Commission level at times and,
5 you know, we're held accountable.

6 COMMISSIONER MC ALLISTER: So, I guess one
7 question I have -- so, thanks for your comments, that's
8 really helpful. And sort of the structure of the
9 industry is what we're trying to figure out what's
10 sustainable, right.

11 And you're -- so, the nature of, you know, the
12 transaction and sort of who's -- I mean, the customer,
13 ultimately, is paying for this and, you know, what your
14 kind of pass-through is to the provider for the use of
15 the registry, and maintaining your certification, et
16 cetera, I mean, those are all issues that are relevant
17 here.

18 I don't know that we need to get into all the
19 details right now. But I think, you know, clearly, in
20 order for this to be sustainable it's got to be
21 sustainable on all levels.

22 You know, we started out talking about QA which,
23 you know, has a significant cost, but that -- all of
24 those costs, you know, your field time, all of your
25 costs, all of the transaction costs, the provider's cost

1 to maintain the infrastructure, you know, all of that
2 has to be paid for somehow.

3 So, you know, it has to be a business that is
4 sustainable. And, obviously, we want to put rules in
5 place to make sure that's not abused but I think, you
6 know, that's why we're here having the discussion so,
7 thanks.

8 So, are there any other comments on this
9 particular topic? I think we should move on.

10 MR. GOMEZ: So, contractors, if there are any
11 contractors in the audience that would like to come up
12 and make comments, please do so now.

13 No other comment in the building. Let me see
14 online. Don Charles? Don?

15 MR. CHARLES: Yeah, I was just going to say --
16 hi, this is Don Charles with USERA.

17 You know, again, I think the process lends
18 itself greatly to standardization across providerships
19 for the QA process. When a red flag occurs, where a
20 decertification issue may be brought to bear that I
21 could see where the CEC then becomes that independent
22 arbitrator to join in the process based on the
23 standardization of these process, to then help render a
24 final decision.

25 That would be my suggestion. I believe the

1 providerships need to do their job and that's why we are
2 providers, to go out and do those jobs.

3 As far as the additional costs and things, all
4 of those things can be covered in our fee steps and
5 different things to account for those costs, if we
6 approach it the right way as business people.

7 But at the same time I understand where the
8 raters are coming from, too. They don't want to be
9 subject to some independent -- you know, some guy that's
10 making decisions arbitrarily based on one set of
11 standards versus somebody else's standards.

12 I think it's very important that we really
13 address the standardization of this process and then if
14 a red flag occurs then at that point maybe then the CEC
15 might have an independent arm at the CEC level to
16 address that, based on the standards that they have laid
17 out across all providerships that we all follow and
18 adhere to. So, that would be my suggestions.

19 COMMISSIONER MC ALLISTER: Thanks for your
20 comments, Don.

21 MR. GOMEZ: Okay, so Commissioner, we are now,
22 again, still 20 minutes behind and we have one more
23 topic before lunch.

24 So, again, as we embark on this next topic,
25 please, try to keep your comments concise and to the

1 point.

2 The next topic is HERS rater companies. We
3 would like the providers to please come to the table.

4 COMMISSIONER MC ALLISTER: Go for it, maestro.

5 MR. GOMEZ: So, let's take turns. Mike, do you
6 want to start with the first question or make your
7 comments in regards to --

8 MR. MICHAEL BACHAND: I don't want to throw Don
9 Charles under the bus, but maybe he'd like to go first.
10 Well, maybe I do want to throw him under the bus, but
11 that's beside the point.

12 MR. GOMEZ: Don?

13 MR. CHARLES: Thanks. No, I'm fine. As far
14 as -- yeah, hi, this is Don Charles. And, no, please
15 don't throw me under the bus and I don't plan on
16 throwing anybody else under the bus for that matter.

17 So, you know, I'm okay. I mean, this is a
18 growing industry. I think the ultimate deal is whether
19 there's HERS rater companies or not, I think the
20 standards and everything can be put into place to
21 address for this.

22 I think the more raters and the broader the
23 industry gets, the stronger the industry will get. It's
24 really all going to come down to the standards and
25 procedures that are adopted for consistency.

1 So, whether it's independent HERS raters and/or
2 HERS provider companies, I don't see an issue. Either
3 way, I think that the more people we have out there
4 adhering to great standards and enforcing those types of
5 things, I think is a good thing.

6 Whether a HERS provider company needs to be
7 certified that probably -- I'm going to reserve judgment
8 on that at this point, I need to contemplate that a
9 little bit more. But just with the overall concept of
10 HERS rater companies, I don't have an issue with that at
11 all.

12 MR. GOMEZ: Well, Don, this is Pedro. I just
13 want to -- there are some pretty specific questions that
14 we're asking here. Do you not want to make a comment on
15 those specific questions and you just want to leave it
16 to a general comment.

17 MR. CHARLES: Yeah, let me -- yeah, I'm going to
18 leave it as a --

19 COMMISSIONER MC ALLISTER: Don, if you --

20 MR. CHARLES: Go ahead.

21 COMMISSIONER MC ALLISTER: In your written
22 comments that I hope you submit, if you have any
23 thoughts about those specific questions, they'd be great
24 to hear, obviously.

25 MR. CHARLES: Well, I think I addressed them

1 kind of in my -- we're talking about HERS rater
2 companies right now. That's the agenda that I'm looking
3 at on my screen. Correct?

4 COMMISSIONER MC ALLISTER: Right, that's
5 correct.

6 MR. CHARLES: Yeah, I mean I think I pretty much
7 addressed the questions. I'm fine with HERS rater
8 companies existing. I'm not sure, yet, whether or not
9 they need to be certified themselves as raters.

10 My initial thought would be they probably should
11 be since they are the ultimate kind of stop gap for the
12 raters that they're employing, that they should probably
13 adhere to similar standards. I'd have to give more
14 thought. I don't have a final thought on that.

15 But just as an overall, you know, over-reaching
16 thing, I'm not opposed to the presence of HERS rater
17 companies. I think anything we can do to expand this
18 industry and have quality people in the industry that
19 can facilitate the growth of this industry, the
20 standards, the processes, the excellence of the industry
21 I think that's a good thing. So, I'm not opposed to
22 HERS rater companies, per se.

23 I guess it comes down to what types of standards
24 do we ultimately want them to hold versus a rater and
25 that I need to give some more thought to.

1 COMMISSIONER MC ALLISTER: Great, thanks.

2 So, go ahead.

3 MR. MICHAEL BACHAND: Thanks, Don. This is Mike
4 Bachand.

5 I want to categorically state we're not opposed
6 to HERS rater companies. We've been working with them
7 since our inception and we appreciate that.

8 But at the beginning of the HERS program, back
9 in 1776 or whenever that was, there was, I think, not a
10 contemplation of how rater companies and firms would
11 eventually grow and become -- working to be major forces
12 in the industry, especially working with the new
13 construction. It was that was the only target on the
14 table until the alterations market came along, and then
15 phase two, and so forth.

16 So, we're certainly not opposed to the concept
17 of rater companies.

18 But specifically, through some of the complaints
19 that we've had, not just one, but a couple, two or three
20 of them, and through QA processes we noticed that rater
21 companies are like many, many, many other companies in
22 the world, they have a culture. They, in fact, sell
23 their company culture to their customers. That's part
24 of what a large rating firm does and that's their market
25 and their product.

1 That's good, but the regulations never really
2 addressed how we deal with situations like that where,
3 you know, to be sort of specific, a rater with -- a firm
4 with ten raters in it, one of them fails, but the
5 culture of that kind of failure is still passed on to
6 other raters, and that should be picked up by QA and so
7 forth, but that's a long process.

8 So, you know, we are concerned about that issue.
9 We want to say that our opinion is that rater firms
10 should have essentially the same culpability and
11 accountability that the raters that they're managing,
12 that's what they say they're doing, we're hiring raters
13 under one business model or another and we state, as a
14 firm, that they're doing their business.

15 Maybe they don't state that, but it's our
16 feelings that they should.

17 So, we believe that that would provide
18 confidence in the market.

19 They could do a rater manager scenario. We've
20 got a scenario laid out here, in some detail, about how
21 a rater manager should come and be taught. Make sure
22 that somebody in the firm at a supervisory level and at
23 a responsibility level knows all the things about
24 ratings, what the rules are, what the protocols are.
25 What happens if you do bad, what happens if you do good.

1 So, I'm going to kind of lump the first three
2 questions together. "Should regulations require an
3 owner/operator to have additional certification and
4 training?"

5 I actually think so because the rating firm also
6 has data entry people who are not raters, and so not
7 subject to rating rules, but are subject to some of the
8 sampling rules, and data entry accuracy, and so forth.
9 So, there's other operators that these larger firms have
10 that should be at least monitored and have some kind of
11 responsibility to the providers, and to the State, and
12 to the consumer.

13 What would that training consist of? Maybe some
14 ethics training, specifically, more stuff on the
15 registries. And I would like to say part of the cost of
16 being a rater is the training.

17 And we went through an era of times when
18 training was just rampant and there was always the cost
19 of expense. How come it's so expensive? Why do I have
20 to be in training for five days? Why couldn't I get
21 this in three days?

22 So, you know, there's that tradeoff that we are
23 trying to find the balance for. And we do feel that
24 rating firms need to have a little bit more
25 accountability as a broad firm, and then that maybe

1 training and other things could go along that.

2 So, I'll let Charlie answer a couple of the
3 other questions.

4 MR. CHARLIE BACHAND: So, going down two, should
5 corrective action -- oh, excuse me, and by the way, this
6 is Charlie Bachand from CalCERTS.

7 "Should corrective action taken against one
8 rater be applied to all raters of a rater company?"

9 I believe that it's certainly feasible that if
10 one rater fails QA, it might be reasonable to assume
11 there's a chance that the other raters of that company
12 are making the same types of mistakes.

13 So, I think it would be a useful thing to
14 consider adding some QA to the quota of other raters,
15 but not at the same level.

16 For example, if you fail one measure now, you
17 get bumped to plus two. I would suggest maybe only
18 bumping up to plus one for other raters of the company,
19 if you follow that tack at all.

20 The next question that I'd like to address,
21 specifically; "Should individuals who are not raters,
22 that are entering compliance document date into a HERS
23 registry need to be certified to do so?"

24 I have a very strong yes answer to this. There
25 are many of these larger HERS firms that do use non-

1 raters for entering data and that is a very complicated
2 thing. They don't understand, necessarily, when they're
3 making a mistake. They're assigning another person's
4 name to a perjury statement.

5 We have had, as a result of our QA inspections,
6 and complaint and inspections, there have been numerous
7 times when the rater claims, hey, look, I know that the
8 paper says something that's wrong. It turns out it
9 wasn't me putting it in the registry; it was a data
10 entry person.

11 And I think that what we need to do is train
12 those people, make them pass an exam, subject them to
13 their own type of quality assurance review in order to
14 sort of close that loophole and eliminate the
15 possibility of accurate ratings having taken place, but
16 wrong entry of that data into the registry.

17 MR. MICHAEL BACHAND: This is Mike. One last
18 point on the question about multi-rater firms being
19 defined to include firms that subcontract with other
20 raters, it's a nuance on the multi-rater firm model to
21 hire subcontractor raters underneath you, but you bill
22 the customers -- all these pronouns.

23 The rating firm makes the contract with the
24 builder or with the HVAC installer for alterations; I'll
25 do all of your ratings for 125 bucks.

1 But then he subcontracts so he's kind of at an
2 arm's length from the actual rater but, yet, he's under
3 contract for the results with the consumer, ultimately.

4 So, I think we should -- I just want to examine
5 how the market has evolved from what it was back in 1994
6 and '95, when duct tests were optional and so were HERS
7 raters. And so, these are things that we think are
8 important to bring to the table to discuss.

9 We don't have a my-way-or-the-highway attitude.
10 What we're trying to do is make suggestions that we
11 think should be vetted.

12 COMMISSIONER MC ALLISTER: Thanks for those
13 comments.

14 MR. LENZMEIER: Hi, this is Jay Lenzmeier with
15 CHEERS.

16 We do understand the rater company -- that they
17 do exist and we do understand that that's a large part
18 of the clientele of CHEERS. We do believe that the
19 owner/operator should be close to the rater process.
20 There may be more sources of revenue that the
21 owner/operator may be responsible for, other than just
22 the HERS rating.

23 So, we do not believe that he or she should be a
24 certified rater. However, we do believe that they
25 should be close to the rater process.

1 They may have, as Mike mentioned earlier, a
2 rater manager that may be even closer to the process
3 than the owner is, but somebody in the company should
4 be. And that same person should be part of the QA
5 process and should be involved in the QA communications
6 between the provider and the rater.

7 But we, at this time, do not believe that the
8 owner/operator should be required to be certified.

9 Should the corrective action for one rater --
10 and by the way, David, chime in when you want to here --
11 should they be applied to all raters?

12 At this time we don't believe that's a
13 requirement, as well. The rater certification is
14 individual and the corrective action would be individual
15 to the rater and should not be applied to other raters
16 in the company.

17 The other response I have is to the last
18 question, which is should individuals, not raters,
19 entering compliance data in the HERS registry need to be
20 certified?

21 We do not believe that's a requirement. Number
22 one, we have to look at costs versus benefit. When
23 you're going to become a certified rater, well, there's
24 cost to that and there's going to be an offsetting
25 benefit that should equal that.

1 And also, too, we have a -- our agreement
2 consists in two parts. We have the rater piece, which
3 they certify that they understand their obligations of a
4 rater.

5 But we also have a registry user portion, in
6 which they understand their obligations as a registry
7 user.

8 So, if the registry is not being -- our firm's
9 registry is not being used correctly, we would not
10 decertify for that non-use, but we would not allow use
11 of the registry going forward.

12 So, for that regard we do not believe that the
13 admin, the entering personnel should be certified.

14 MR. CHARLIE BACHAND: I have an additional,
15 slightly separate comment to make, so I wanted to let
16 that part play out before I added a topic that wasn't
17 listed but fits in this category, very briefly.

18 I'd like to at least put on the table the idea
19 that a multi-rater firm could perform some internal QA
20 on themselves, and that might actually contribute
21 towards the requirements of the provider to perform QA
22 on those multi-rater firms.

23 For example, if there's transparency between the
24 multi-rater firm and the provider, so that we could see
25 those QA results, perhaps that could contribute to

1 meeting the quota, as well as making sure that the
2 multi-rater firm has its own internal culture and
3 communications well taken care of.

4 COMMISSIONER MC ALLISTER: Interesting. I guess
5 for me a lot of this issue boils down to whether -- so,
6 in the case when you have a firm, potentially, that has
7 a bunch of raters and, you know, so you -- this question
8 comes out of the complaint process we had, where we
9 thought that -- or where we just saw a dynamic where the
10 accountability was with the rater, but the company
11 pressures were not under the rater's control.

12 So, trying to sort of -- get a sense of how real
13 that problem is and how -- and what the potential
14 solutions are. I mean, at the end of the day the rater
15 is the one signing that contract, saying that they are
16 going to do the work in a certain way.

17 And so, one would hope that sort of that
18 contract meant enough to the rater, if they were being
19 asked to do something that wasn't -- that implicitly
20 they were pressured to do something or, you know, get a
21 result, or do many, many jobs in a certain amount of
22 time, or whatever the pressure might be, which we can
23 speculate on, that they -- you know, they stand up and
24 they say, hey, I've got this agreement, I have to act in
25 a certain way to meet this agreement.

1 And so, certainly, that -- in the world out
2 there, you know, it's a dog-eat-dog world and that may
3 have some risk associated with it.

4 So, that's the sort of -- I believe that's the
5 underlying kind of question that we're grappling with
6 here.

7 And I guess some sense of how much of a problem
8 this is in reality. And I guess -- I'm hoping the
9 raters have something to say about that.

10 And then whether it's sort of fixable within the
11 current structure of the regs versus having to create
12 something new because I think, you know, we all know the
13 downside of creating something new means more cost, and
14 more kind of transactions, right. So, anyway, I wanted
15 to kind of lay out the issues there.

16 MR. CHARLIE BACHAND: I'll let raters speak to
17 their pressures themselves, but having provided
18 instruction to raters and having reviewed their QA
19 results, and having spoken to many of them and, also,
20 just on having QA results and decertified raters, or
21 subjected them to discipline, I find that they are
22 subject to that kind of pressure relatively frequently,
23 and that it is a problem that needs to be addressed.
24 Thank you.

25 COMMISSIONER MC ALLISTER: All right, thanks.

1 Anybody online who wants to talk?

2 MR. GOMEZ: Yes, let me unmute Don. Don?

3 MR. CHARLES: Hi, this is Don Charles with
4 USERA. You know, I think there are other some examples
5 in some other industries out there that are using this
6 model.

7 I know, for instance I've done some work in the
8 real estate appraisal industry, where they now have a
9 whole host -- because of the whole real estate debacle
10 that occurred here a few years ago, there's now these
11 companies that have entered the marketplace called AMCs,
12 that now manage real estate appraisers, but they do work
13 across multiple appraisers.

14 But at the end of the day the real estate
15 appraiser is still responsible, certified and licensed
16 to do their job. So, you know, at the end of the day I
17 believe that the onus is on, ultimately, the rater.

18 However, I also think that, you know, if a rater
19 company is going to use a rater and/or, you know, have
20 multiple raters I don't know that we should over-process
21 it, but I think it might behoove us to have some sort of
22 QA process in there that at least they might look to.

23 I think it would only benefit them as a rater
24 company to do that for themselves, so that they don't
25 run into potential issues, so there is some sort of, you

1 know, standard in place that they can be held
2 accountable as a company, as well.

3 But I think at the end of the day the onus has
4 got to be on the rater for whom is certified to go out
5 and do the job that a rater does.

6 COMMISSIONER MC ALLISTER: Thanks for your
7 comments.

8 MR. MICHAEL BACHAND: Can I make one last
9 comment, please, this is Mike Bachand.

10 COMMISSIONER MC ALLISTER: Sure.

11 MR. MICHAEL BACHAND: I just want to lay out a
12 brief scenario. A rater firm, with many raters, will
13 oftentimes hand to a rater a sheet that says go to the
14 job, do these tests. The rater doesn't know if those
15 are the tests that are required under the CF1R or not.
16 He has a summary sheet from his boss that says go do
17 this.

18 So, then putting the rater on the spot for that
19 is sort of, you know, questionable, maybe. And maybe
20 that's the way it should work. That's just another
21 scenario that sort of clouds this issue.

22 I really hope that we can explore this further
23 again, this is another area.

24 COMMISSIONER MC ALLISTER: I mean, to some
25 extent this might -- the mentoring idea and sort of

1 what's the role of QA, and that kind of thing, and like
2 what are the touches with the raters that can help
3 educate them about what their responsibilities are and
4 keep that fresh.

5 MR. MICHAEL BACHAND: Yes.

6 COMMISSIONER MC ALLISTER: So, you know, that
7 rater, that scenario you just described, that rater
8 ought to be saying, well, you know, I have to have -- in
9 order to really know what I'm supposed to be doing at
10 these house I probably ought to see the CF1R, right, and
11 this is part of my job.

12 And so what that -- you know, we can't get into
13 the relationship between boss and employee, and stuff,
14 but I do think that making, sort of getting top of mind
15 on what the rater responsibility is and making sure that
16 they are taking that seriously every day, and that
17 there's a reason that they need to do so, right. That
18 there's some risk of not doing so and that there's some
19 positive benefit for doing so I think is important.

20 And, you know, that's not necessarily anything
21 that we can put in regs in any explicit way, but it is a
22 part of this conversation.

23 MR. MICHAEL BACHAND: Thank you.

24 COMMISSIONER MC ALLISTER: So, thanks.

25 MR. CHARLES: This is Don, again. I

1 completely -- I understand what CalCERTS is saying. I'm
2 not disagreeing with that. But I agree, Jim, with what
3 you're saying. I think ultimately the rater is the one
4 who is certified to go out and be a rater and they need
5 to know what they are signing on for, and what they're
6 doing based on the regs. And they need to be familiar
7 with their own profession and know that they're within
8 the scope of what they're supposed to be doing.

9 COMMISSIONER MC ALLISTER: Okay.

10 MR. GOMEZ: Okay, so we invite, now, HERS rater
11 companies and raters.

12 Bill Lilly, can we start with you.

13 MR. LILLY: You want me to go first, okay.

14 MR. GOMEZ: Sorry, that's Dave Hegarty. Can we
15 start with you, please? Can we start with you on
16 comments?

17 MR. HEGARTY: Pedro. I was still gathering my
18 thoughts, Pedro, sorry.

19 MR. GOMEZ: Okay.

20 MR. HEGARTY: Dave Hegarty, DuctTesters.

21 On multiple-rater companies, we call them firms,
22 on the questions and specific, you know, should the
23 rater -- owner of a multiple-rater company also be
24 certified? And my answer is yes.

25 If you know anything about, for instance, our

1 esteemed colleague sitting at the desk that's court
2 reporter style situation, he -- no rater -- no court
3 reporter can be a firm owner without that because they
4 need to sign these documents, too, or be responsible for
5 them.

6 So, it's kind of the same. I just happened to
7 be familiar with that kind of work and it kind of lends
8 itself to what we're doing, too. So, yes, I believe
9 that they should be.

10 Regulation, should they have additional
11 training? If you have some additional training for me,
12 I'd love to take it. We spent almost \$100,000 last year
13 in training, in training and QA. I have 14 raters. And
14 keeping up with that and making sure that they're
15 advised of what's going on at all times is a task in
16 itself, and very costly. Not that we don't bear that
17 cost and we want to, but we want to also assure -- we
18 were doing QA on our raters long before the June issue
19 came up. And, you know, maybe not as technically as it
20 is now, today, but we do have those in place.

21 I know many of the -- of my esteemed colleagues
22 that have multiple-rater agencies, they also have that
23 QA in place.

24 Moving on to -- so, that lends itself to the
25 fact that you're getting double QA in a sense with

1 multiple-rater agencies.

2 Moving then to the next question, what should
3 that training consist of?

4 That's going to be a -- that's a vague question
5 at this point and I think that, you know, we would love
6 to be involved in any action to bring that to light.

7 I absolutely do not believe that one rater
8 should spoil the whole barrel of apples, and I don't
9 think it does.

10 The fact of the matter is that the raters were
11 thrown -- the multi-family raters -- or multi-rater
12 firms were somewhat thrown onto the bus in June as a way
13 to make the problem not what the problem really was.
14 So, we want to make sure that the staff and
15 Commissioners know that if you have control over one
16 rater as a provider, you have control over that whole
17 rater-ship, if you don't mind.

18 COMMISSIONER MC ALLISTER: Uh-hum.

19 MR. HEGARTY: Because if that rater is
20 decertified it goes on there, they know who that rater
21 was with, which brings some other issues up with this
22 list.

23 COMMISSIONER MC ALLISTER: So, the dynamic
24 there, is there a -- does that produce an incentive for
25 the rater company to keep its nose clean, and make sure

1 its raters are doing good work and everything so as to
2 not have that blemish on its record? I mean, is there
3 an existing incentive already there?

4 MR. HEGARTY: There is. I believe so. Whether
5 or not the rater name -- or the agency name goes on the
6 so-called bad-boy list, which is a whole 'nother topic,
7 they know who that rater was with.

8 MR. NESBITT: Not all boys.

9 (Laughter)

10 MR. HEGARTY: And so making sure that the
11 agencies or the multiple-rater firms do something beyond
12 what they're trying to do now is -- or making them --
13 holding them responsible for each individual rater as a
14 whole rater-ship, maybe there should be additional QA
15 that I can do when I find something, an anomaly.

16 But to that extent, we do do that now. And we
17 make sure that if we get a rater changing -- our raters
18 use i-Phones and they report by i-Phones.

19 Just let me get into that, I don't want to take
20 too much of everybody else's time. But all of the
21 results are sent from a site, where they have to be on
22 that site, and when they hit that send button I can tell
23 where they're at any time.

24 So, if they change something, they better have a
25 good excuse for changing it. And I can document for

1 each time that it is either changed or that it is sent
2 in to the data, and you can blame at least me, in part,
3 for the data entry people who are back at the office
4 because it's much more productive for raters to go out
5 there and do what they do best, and that's testing. And
6 have the data people enter that data, as long as they
7 know that they can confirm and that the rater sends
8 that, they know that that data came from that rater, and
9 we can prove there.

10 So, there is technology out there that helps us
11 do that and helps us be much more productive. And I
12 point out that Commissioner McAllister has said several
13 times "cost of doing business" and I want to relate that
14 to what we do, because we have to keep that cost down
15 for builders, who pass that along to their homeowners.

16 So, energy, also by its nature and the
17 California Energy Commission's rules, has to be cost-
18 effective, so those things.

19 I'd like, also, to then mention the rater firms
20 have a greater responsibility as well, and they have a
21 greater cost because they have much more overhead. And
22 the kind of programs that we get involved in, in a lot
23 of ways, multi-family, the Department of Energy Builders
24 Challenge, the tax credits, the Energy Star require a
25 much greater insurance process than individual raters

1 can bear.

2 We are also involved in CTCAC. I don't know if
3 you guys -- The California Energy Tax Allocation
4 Committee.

5 COMMISSIONER MC ALLISTER: Uh-hum.

6 MR. HEGARTY: And EEM mortgages, those things
7 extend -- what you've created here has gone far beyond
8 your wildest imagination which we, you know, thank you
9 for and thank you for the business.

10 But smaller, one-shop, one-rater shops and stuff
11 have more difficulty getting to those arenas because it
12 takes such a greater amount of money up front. They
13 don't, sometimes, get paid for eight, ten months on a
14 year and a half -- on a multi-family job. Can they bear
15 those costs? No. That's where big rater agencies come
16 together.

17 So, on the last question there, the data entry
18 people are very important to keep these costs down and
19 they are held to a high standard. And there does happen
20 to be sometimes errors. But we make sure that the rater
21 knows those errors if there are, if they are not his
22 errors, and we are able to document those things.

23 And to that credit right now, Hugo is very --
24 Hugo, at CalCERTS is very accommodating when that
25 happens, as long as we have a great reason, or something

1 that we can explain that makes sense to him. If not, I
2 know that Charlie has looked into that several times,
3 gotten several calls from him. And when we have been
4 able to talk about those things, they've come out.

5 I do disagree with Charlie's statement, not
6 intentionally to upset you, Charlie, but the fact of the
7 matter is that the rater agencies do not put pressure
8 on, at least not in my case, and nor do I know of
9 anybody that does. It would give us a bad name.

10 And those raters, and especially the way we do
11 business, and I can only speak for myself, I can prove
12 out all those -- the technology gives me that stuff. We
13 have great technology coming in this industry and you're
14 going to see more of a consolidation and more of people
15 getting involved in higher or more multiple-rater
16 agencies.

17 And then I did want to disagree with Mike about
18 something, at my own peril here, but I can't remember
19 what it was.

20 COMMISSIONER MC ALLISTER: You'll have to take
21 outside, anyway, so --

22 (Laughter)

23 MR. GOMEZ: So, before we got to the next
24 commenter, we are right now at 12:01, so this is time
25 for lunch. Let's push through to get through this

1 comment session, Commissioner?

2 COMMISSIONER MC ALLISTER: Yeah, let's try to
3 get through this one, if we can speed up the clip a
4 little bit. But I think this is an important topic and
5 we need to get -- you know, give folks the opportunity
6 to kind of air out because I think it's a -- we'll be
7 making decisions about this.

8 MR. GOMEZ: Again, please try to stick with your
9 three-minute timeline.

10 COMMISSIONER MC ALLISTER: So --

11 MR. AMARO: Allen Amaro, I'll jump in there
12 again.

13 COMMISSIONER MC ALLISTER: Go, Mr. Amaro.

14 MR. AMARO: One of the things, a topic that was
15 broached and we've continued to talk about is the fact
16 of training for staff for a rating company.

17 At one time I had ten raters. I was with CHEERS
18 and every time I called and asked a question, or
19 proposed an e-mail to get some information, I was
20 answered within 24 hours.

21 And between 2006 and -- well, 2005 to 2007 my
22 company did 25,000 ratings. I've never had a problem
23 getting an answer back from CHEERS.

24 My last two years with CalCERTS I have
25 unanswered e-mails, unanswered phone calls. So, I would

1 think that the providers need to be put on some sort of
2 a notice we're their clients and when we call and ask a
3 question, or ask a specific need, they're support to be
4 our support. They're supposed to, you know, readily
5 give us that. But not being answered, not be responded
6 to the e-mails, being thrown out of the office by Mike
7 when I was down there asking a question is not conducive
8 to good relationship between anybody, including the
9 answers that you're going to bring back to your staff so
10 they can do the input. So, we really need a lot of --
11 we really need a lot of help in that direction.

12 And I think we can all benefit from rather
13 having these things pop up, know that the provider --
14 we're paying the provider for that technical support.
15 We're paying the provider to do these things. And if
16 the provider needs more money business -- I'm a
17 businessman, I've been a businessman for a lot of years.
18 So, all I'm just trying to say is the mechanism of what
19 you need to charge to become a profitable business,
20 that's something that you need to know.

21 To pick everything out and say I need more money
22 for this, I need more money for that, I need more money
23 for this is not really a good -- isn't a good way to
24 talk to the raters.

25 COMMISSIONER MC ALLISTER: The question on the

1 table -- I appreciate those comments. The question on
2 the table is really about the sort of dynamic at the
3 ratings companies, yeah.

4 MR. AMARO: Yeah, that's my comments.

5 COMMISSIONER MC ALLISTER: Thanks.

6 MR. FLORES: John Flores, Valley Duct Testing.
7 I am one of those multi-rater companies. We have ten
8 raters in our organization.

9 And I just want to put on record that I resent
10 the comment that Charlie made that if a rater does
11 something wrong, that the assumption by CalCERTS is that
12 we all do something wrong. And I think that's totally
13 inaccurate.

14 We have meetings every couple of weeks to be
15 able to go over problems. I give them recommendations
16 on what I would do when I test at a house and I tell
17 them it's your decision how you want to do it because
18 you're an individual rater and your livelihood is
19 responsible for that, for what you do out there.

20 We try to do as much training as we can. If the
21 providers would give us their QA protocols, we've asked
22 for lower door protocols for three weeks, have not got
23 anything from them.

24 If we knew how they were testing, we could in
25 turn train our raters how they were testing and we would

1 have less errors in QAs if we understood what they were
2 looking for.

3 As far as the office staff, two and a half years
4 ago they had a 56-page office manual that nobody's ever
5 seen, that we prepared for them, my company prepared for
6 them. Nobody's ever seen that.

7 I think that if that manual, or if something
8 similar to that was given to all the rater companies and
9 individual rates to say here's a manual of how to run
10 through our registry, it would be our responsibility to
11 train our people. But if we had that -- because there's
12 constant changes and we understand that, we understand
13 those changes.

14 The other thing is that I went through, as Dave
15 did, in October of '05 and got certified. We had one
16 update class before the '08 standards. There has been
17 multiple manual changes, multiple things changed in the
18 industry and I believe the providers should put those
19 things on a public website for us, so we could access
20 those, so we can print those new manual pages out when
21 they've changed their protocol or they've changed their
22 process for what's going on. So, we could take those,
23 print them up and give them to our raters.

24 Right now we have nothing. You know, we're
25 working off of old stuff and nobody's been required to

1 go through any update classes.

2 Now, obviously, we're going to here soon with
3 the new 2013 standards. But right now we've got nothing
4 to work with. We've got a provider that's not providing
5 us this information. We ask for help and we don't get
6 the help.

7 I just think that, you know, we're left out here
8 on an island to do our best, but they're the ones
9 writing the tickets. They're the police people writing
10 the tickets for something that we don't even know, in a
11 lot of cases, what we're doing wrong because they've
12 interpreted things differently.

13 COMMISSIONER MC ALLISTER: So, you know, I hope
14 you get this in some written comments and I see you're
15 submitting some stuff on the record but, you know, make
16 that as explicit as you can as far as sort of what you
17 think the solutions are and that would be very helpful.

18 MR. FLORES: Okay.

19 COMMISSIONER MC ALLISTER: And sort of, in
20 particular, what could be -- what, in your view, would
21 be something that the regulations would need to specify.
22 Maybe in terms of resources, but definitely in terms of
23 process, you know, what needs to be made more explicit.

24 MR. FLORES: Correct. They have the resources.
25 It's a matter of giving them to us because they have

1 training. You know, they have training, they have
2 manuals, they have all that data. If we were just to
3 have access to it, then we could keep current with all
4 the new classes and stuff.

5 COMMISSIONER MC ALLISTER: Thanks for your
6 comments.

7 MR. GWIAZDON: I'll try and keep this brief.
8 I'm Dan Gwiazdon. I own a company called Energy
9 Conservation Pros. Don't currently have raters working
10 for me, but that is the business plan that I've
11 established.

12 I see this as no different than the CSLB, how
13 they handle a contractor's license.

14 As an owner of a company you have a choice. You
15 can go get your contractor's license and run your
16 business or you can hire somebody with that contractor's
17 license and let them manage your business. So, I see
18 that -- I don't see any difference here.

19 As long as someone on staff has the required
20 licenses and permits and is managing the business, the
21 business owner ultimately is responsible for whatever
22 their employees do.

23 You know, I had at one time 35 employees and
24 they're all representing me, working under my license.
25 It didn't change the fact that I'm responsible because

1 there's 35 of them. It could just be one.

2 I chose to go through the training only for my
3 own edification and to understand the business, and
4 know, when I have an employee, what to expect of them.

5 Let's see, I don't agree at all that if one
6 rater in a company is disciplined that that should be
7 applied to other raters in a company. I think that's
8 apples and oranges.

9 And as far as the last question, the
10 certification for people entering data, I think that
11 training would be valuable, but that's ultimately the
12 HERS rater's responsibility to enter that information.
13 If he delegates that, it's no different than the
14 contractor delegating an installation, a plumbing
15 installation to someone. They're responsible for it.
16 It's their responsibility to make sure that that person
17 is trained sufficiently to enter the data. Thanks.

18 COMMISSIONER MC ALLISTER: Thank you.

19 George.

20 MR. NESBITT: George Nesbitt, Environmental
21 Design Build. My first reaction to CalCERTS' counter
22 complaint last year was, hell, no, I don't like this
23 idea. I think I still don't.

24 If I'm a rater working for a company and you
25 discipline the company, are you going to decertify me,

1 too?

2 You know, I think currently we have the ability,
3 if an individual rater has a problem you can QA them,
4 you can discipline them. If you think it's a company-
5 wide problem, well, you do a little more QA on the other
6 raters and see if it is a company-wide problem or an
7 individual rater problem. There's nothing stopping that
8 from happening.

9 To contrast, BPI certifies individuals but does
10 no QA. BPI accredits companies and only does QA on the
11 companies. Believe me, there's a lot of certified
12 individuals that are never going to get QA'd because
13 they exist way outside of that accredited company.

14 I think at our core we are certifying, and
15 QA'ing and disciplining individuals.

16 We have a responsibility. I, as an employer, if
17 I subcontract or have an employee, I am ultimately
18 responsible.

19 At what point do I become a company? I'm a one-
20 person shop. But when I do a big job I bring in a
21 colleague who is certified. If they screw up, I'm
22 responsible because I'm signing my name.

23 So, I would love it for a big company if the
24 high-up people are certified so they do understand my
25 job, whether we want to require it or not.

1 The last time I got training on the old CHEERS
2 registry, it's been a lot of years and the server went
3 down in the middle of the training. So, most of us have
4 never been trained on the registry.

5 If we are delegating to office staff, it would
6 be good if they had training. So, we absolutely need
7 training on the registry. I believe it's part of the
8 Title 20 requirements for providers to provide training
9 on that.

10 So, yeah, I just -- you know, I think there's
11 some need, but I don't think this is like the biggest
12 problem we have. I think we have a lot of other issues
13 with just implementation, and enforcement, and other
14 things that this is probably not our biggest fish to
15 fry.

16 COMMISSIONER MC ALLISTER: Thanks.

17 The green light needs to be on. There you go.

18 MS. MC GHIE: I'm Paulette from Energy
19 Inspectors. And I wanted to add a few comments. We
20 have multi-raters in our firm.

21 And I believe that as a rating company and
22 employing several certified HERS raters in the State of
23 California that we should always employ raters that are
24 in good standing.

25 Part of that would require that when there's a

1 QA done that the company in which the rater is working
2 for is also notified of the performance of that rater,
3 whether they pass, or whether there's issues in the
4 field, so that the rating company can also deal with the
5 issues along with the provider.

6 Do we believe that one rater's action equals
7 that all the raters are having issues? Absolutely not,
8 I think it should be based solely on rater-to-rater.

9 And as far as, you know, data entry, I believe
10 that education on that would be very acceptable. And if
11 there are issues, and which were referred to by
12 CalCERTS, I think that those issues should be addressed
13 and that training be put together for data entry because
14 we want everything to be consistent and flow as well as
15 possible. Thank you.

16 COMMISSIONER MC ALLISTER: Thanks for your
17 comments.

18 MR. BERIAULT: Eric with EnerGuy. Okay, so on
19 points one, two and three, so we're definitely open to
20 that, to the idea of having some sort of -- either the
21 owner or a rater manager type person with extra
22 certification. We're fine with that.

23 Obviously, we'd want to see what that would look
24 like but, you know, we're good with that.

25 On number four, point four, the corrective

1 action, I don't think -- my short answer is no. And I
2 think that a well-functioning QA process would find any
3 issues with other raters within that company, if that's
4 the case. I don't think we have to paint everyone with
5 the same brush.

6 There was a comment about, you know, maybe a
7 certain culture but, like I said, a well-functioning QA
8 would find that pretty quickly.

9 For the last point on the data entry, I really
10 think that ultimately the responsibility for what
11 happens on the CF4R is kept with the rater. There's a
12 comment of -- I heard a comment about raters not seeing
13 CF1Rs and that surprises me. Does that really happen?
14 Do raters not see the paperwork? I would hope not.

15 CalcERTS does a good job. Every day they send
16 an e-mail to the raters for everything that has been
17 certified under their name. So, it's up to the rater to
18 make sure that they certified those or that it's their
19 data.

20 Each rater has their own login and access to the
21 CalcERTS registry. If people are doing data entry with
22 that information then the rater needs to be aware of
23 that, and they are aware of that.

24 So, they are -- I don't think it's an out to
25 say, well, I didn't put the data in. Well, you agreed

1 to certify it. You need to look at it.

2 Having said that, additional training for the
3 staff is beneficial, always. I don't think they
4 necessarily need their own certification.

5 But I also did like the suggestion that CalCERTS
6 made of maybe having an internal QA for the rater firms
7 to do kind of a desktop review of the staff that are
8 there. I think that's beneficial as well and we would
9 support something like that. Thank you.

10 COMMISSIONER MC ALLISTER: Thanks for your
11 comments.

12 So, I appreciate -- I guess -- well, I think
13 this has been very helpful. We're kind of figuring out
14 what issues are bubbling up. It seems like there's -- I
15 don't know if there's a consensus, but there's
16 definitely some feeling that the QA process could help
17 in this realm as well.

18 I'm sorry, yeah, go ahead. We've got one more
19 comment here.

20 MR. HEGARTY: Yeah, I agree with what Eric said
21 in a lot of the areas. But I also --

22 MR. GOMEZ: Dave?

23 MR. HEGARTY: This is Dave Hegarty, DuctTesters.
24 I agree with Eric, what Eric's just said, too.

25 In the case of what I remembered about what I

1 was going to disagree with Mike was about the CF1R. I
2 think the raters do do that and I want to make sure
3 that -- you know, to make sure that -- by the way, Mike
4 gave -- early on in our relationship Mike did come out,
5 personally, and assist my ladies into -- because he knew
6 the process that I was doing. Not that he liked it, but
7 he knew it. And we worked closely together to get that
8 right, so that when we do have that -- when we download
9 off our software, the raters' tasks, it comes right off
10 of the CF1R. So, when they see something, they see
11 exactly what they're doing.

12 So, the technology, again, I want to stress the
13 technology is there to put this into effect so that the
14 raters see that.

15 And for whatever the -- you know, for the
16 compliments, I have to give CalCERTS for sending out
17 those -- I think just in the last year, six months, that
18 they do send out to the raters, each individual rater
19 those comments as to what they've certified for that day
20 so --

21 COMMISSIONER MC ALLISTER: Great, thanks.

22 MR. FLORES: John Flores, again, one last
23 comment. CalCERTS had made a comment regarding our guys
24 not seeing the CF1Rs.

25 We produce -- because we're, again, a multi-

1 rater company, we produce spreadsheets that have all the
2 data and the tested features that need to be required,
3 and the targets that need to be hit.

4 For a rater to be able to go out on a job and
5 have to be able to look at a CF1R and interpret what a
6 CF1R says, it's very difficult.

7 So, what we try to do is we try to give them the
8 data so they understand what tests are required, and be
9 able to give them enough help so that when they go out
10 there that they know where they need to be. And if
11 there's any discrepancies, then they can go on the
12 registry, pull up the CF1R. CalCERTS has done a great
13 job of having access to that so they can go in there and
14 look at the CF1R on new construction, and see if it
15 really should be R-38, or R-30, or what the blower door
16 numbers should be, and things like that. So, we do give
17 that to our raters.

18 COMMISSIONER MC ALLISTER: Okay, thanks.

19 MR. NESBITT: George Nesbitt, one quick comment.
20 I have seen the wrong information come through on the
21 registry on the 1R. The first certified new single-
22 family home net zero energy in California, there's no
23 exterior R-4 wall insulation in what came through the
24 registry, you know, and so that might be an Energy Pro
25 problem, or it might be a registry problem.

1 So I, of course, always want to work off the
2 source document. That's, you know, personal but --

3 COMMISSIONER MC ALLISTER: Okay, thanks.

4 MR. GOMEZ: Yeah, before we transition out to
5 lunch, I want to open it up to anybody else in the
6 audience that has comments. Is there anyone else?

7 COMMISSIONER MC ALLISTER: Thanks, everybody,
8 for your comments on this panel.

9 Is there anybody online? I mean, I want to make
10 sure we get everybody.

11 MR. GOMEZ: We've already checked online, there
12 are no comments.

13 COMMISSIONER MC ALLISTER: Okay, great. Any
14 public comments, or builders, or anybody else want to
15 sort of get their digs in before lunch?

16 Between everybody and lunch, just so you know,
17 there's a rabid crowd between you and the --

18 MR. GOMEZ: Commissioner, there's one person
19 online.

20 COMMISSIONER MC ALLISTER: Okay.

21 MR. GOMEZ: Will Chandler, are you on?

22 COMMISSIONER MC ALLISTER: Go ahead.

23 MR. CHANDLER: Yes, hi. Hi, thanks for taking
24 the call.

25 MR. GOMEZ: Please state your name?

1 MR. CHANDLER: So, we are primarily -- oh, I'm
2 sorry, Will Chandler with ecoProach, we're over here in
3 the Bay Area, and we're only just starting to see
4 requirements for raters coming through.

5 As a compliment to the BPI, the Building
6 Performance Institute assessments that we do, we also
7 wanted to open up our product line for raters. And
8 that's why I'm very interested in the conversation
9 that's going on right now.

10 I do believe that there is a way that a good
11 company could offer rater services without having to be
12 a rater, themselves. And I would hope to see some kind
13 of policy that would support that.

14 I think it would be healthy to have the company
15 registered in some way to make sure that they're an
16 actual, viable company, a business license, you know,
17 all the right things in place.

18 It works -- we've only done but a couple of
19 them, but it's worked well with us because I've allowed
20 my raters to act independently and I treat them with the
21 utmost respect. And if they say it's failed, it's
22 failed. It's worked well because they can be
23 independent without having to be influenced by the
24 customer or the contractor in any way and they can do
25 their job.

1 They've handled all the paperwork successfully
2 and I think that model works well, as well.

3 While I have been exposed to a HERS 1 rater
4 class, I have decided, personally, not to go through
5 that, but still would like to offer the services through
6 my company for raters. And I'm hoping that we don't
7 suddenly have a requirement where the owner of a company
8 has to become a rater in order to provide rating
9 services. So, I just wanted to get that comment out
10 there.

11 COMMISSIONER MC ALLISTER: Thank you very much
12 for that comment.

13 MR. GOMEZ: So, Commissioner, we had originally
14 allotted an hour for lunch. Do we want to stick with
15 the one hour?

16 COMMISSIONER MC ALLISTER: Yeah, I think we need
17 to give people an hour for lunch. We're in a little bit
18 of a food desert out here so you've got to walk a couple
19 of blocks.

20 MR. GOMEZ: So, it's 11:22.

21 COMMISSIONER MC ALLISTER: Let's reconvene at,
22 let's say -- it's 12:22.

23 MR. GOMEZ: I'm sorry, 12:22, sorry.

24 COMMISSIONER MC ALLISTER: Yeah, so 1:25, let's
25 say.

1 MR. GOMEZ: Okay, 1:25. Thank you.

2 COMMISSIONER MC ALLISTER: Thanks, everybody.

3 (Off the record for the lunch break.)

4 MR. GOMEZ: Commissioners, are we ready?

5 Okay, so we are down to the last two topics.

6 Based on a comment earlier, we're swapping the last two
7 comments. We're going to flip them.

8 The last comment of the day was going to be
9 permissible HERS provider certification categories.
10 We're going to speak to that, now, and we will move the
11 conflict of interest to the last topic.

12 With that said, we'd like to invite providers to
13 the table to have a discussion on permissible HERS
14 provider certification categories.

15 COMMISSIONER MC ALLISTER: Well, one of the
16 goals that we have for the HERS arena is for everybody
17 to play nice, so this is a little object lesson here.

18 MR. MICHAEL BACHAND: We'll play nice.

19 MR. GOMEZ: Again, before you start, please
20 state your --

21 COMMISSIONER MC ALLISTER: You're doing a great
22 job so far.

23 MR. GOMEZ: Please state your name and your
24 affiliation.

25 MR. MEYERS: David Meyers with CHEERS. So, I'm

1 just going to take these question by question.

2 So, the first question is "Should HERS providers
3 be required to get certifications for all the categories
4 of field verification and diagnostic testing?"

5 Our position is that, you know, there's a lot of
6 pros and cons, I think, to that position, and we're
7 certainly willing to work with the CEC, CalCERTS and
8 other key stakeholders to evaluate whether or not that's
9 a good idea.

10 "Should providers be approved for only one
11 segment of the market?"

12 Again, I think the answer I just gave relates to
13 that question, as well.

14 "How does segmenting the HERS industry impact
15 consumers?"

16 Well, by segmenting it, you're going to allow
17 providers to enter the market sooner. If you require
18 them to get certified for res new construction,
19 alterations, NSHP, building performance contractor, the
20 capital investment and the time is going to be more
21 significant.

22 So, going into it you need to understand that if
23 you're looking for more diversity and more players in
24 the market, potentially you should allow segmentation.

25 "Should it be ensured that all aspects of the

1 Title 24 compliance are being offered by one or more
2 providers?"

3 I think I've already addressed that one so --

4 COMMISSIONER MC ALLISTER: Thank you very much.

5 MR. MEYERS: Thanks.

6 COMMISSIONER MC ALLISTER: Okay, great.

7 MR. MICHAEL BACHAND: Thanks, Mike Bachand from
8 CalCERTS.

9 We have basically the same types of concerns
10 and, you know, general agreement in the sense that
11 specific language in regs does say providers need to
12 satisfy all requirements. So, we still think that it
13 would require maybe a regulatory change or a language
14 change, which I'm understanding is not necessarily
15 impossible based on these proceedings, but that's a
16 legal issue.

17 Our concerns are basically the same. We want --
18 we noted some segments of the consumers, contractors,
19 building departments, IOUs, they all need to have the
20 same perception of what the HERS program is because
21 right now we are in market transformation, as we've
22 talked. We have said, look, the market needs to grow,
23 it needs to encompass AB 758, and other programs, and
24 code, and everything else.

25 Segmenting it is going to -- potentially could

1 create, let's say, five little small markets, all of
2 which need to be transformed in their own pace and their
3 own step. That could be very difficult, so that's one
4 of the negatives.

5 Consistent treatment across providers; some of
6 these things have been addressed, actually, in other
7 comments.

8 It could open the door to a monopoly in one
9 segment or another. Maybe only one player wants to play
10 in a particular segment.

11 And, conversely, it opens the door to a loss of
12 some segments of the overall HERS program. I do not
13 think there's any part of the HERS program that should
14 be left unsupported.

15 I think the HERS program works, particularly
16 well on paper, and less well in the field maybe, yes.
17 But that's what we're doing, we're trying to grow the
18 industry and improve it.

19 So, I think it's -- you know, this bears very
20 careful looking. This is a really market significant
21 issue to me.

22 It may also increase the difficulty of raters
23 transferring providerships and some of the raters made
24 comments similar to that earlier. What if I get in
25 trouble here, but I'm not in trouble over there, in new

1 construction market, and PD systems over here, and so
2 forth.

3 So, just a lot of really sort of can-of-worms
4 types of questions that come up.

5 It also brings together the concept of making
6 sure the data is flowing correctly through the building
7 departments and everybody else.

8 So, you know, I hope we get lots of conversation
9 on that issue.

10 Should providers be approved for one segment of
11 the market, I'd kind of address that in the same sense.
12 It does cost more to get in, it takes a long time. You
13 know, the same old story, there's two sides to that
14 coin, too. Quicker is cheaper, but not necessarily
15 better.

16 And so, a reasonable process would be helpful
17 there.

18 We don't say that -- our short answer is no,
19 unless it's done some way that I haven't anticipated,
20 yet.

21 And then how does segmenting impact the HERS
22 customers?

23 Go ahead.

24 MR. CHARLIE BACHAND: I'd like to add, just
25 briefly, and I apologize for interrupting, but I think

1 that if providers are approved for only one segment of
2 the market that also makes it very difficult to apply
3 consistent training requirements and consistent QA
4 requirements. It's not impossible, but it does make it
5 harder when one person is QA'd at one firm that does
6 whole house ratings, let's say, and then the other firm
7 that doesn't receives notice from the provider, as
8 they're supposed to, this person failed a whole house
9 QA. Then the other provider has no idea what to do
10 because they don't even have another program that
11 mirrors that so, it gets in the way of consistency, but
12 not insurmountably so.

13 MR. MICHAEL BACHAND: Thank you. That was a
14 good comment.

15 And then should it be ensured that all aspects
16 of Title 24 are being offered by one or more providers?
17 The short answer there is yes. We found out the dangers
18 of not. We've been through that rat hole, maybe,
19 already. So, we want to say yes, if we're going to have
20 a HERS program let it be robust, and broad-spectrum,
21 supported by many players.

22 MR. CHARLIE BACHAND: And I do have one other,
23 brief addition to make. In discussing how does
24 segmenting the HERS industry impact consumers?

25 Well, we already know that homeowners, for

1 example, have a hard time understanding HERS. If they
2 are further confused by a proliferation of providers out
3 there that are incomplete, rather than complete, I think
4 that will make that confusion worse.

5 I think that same argument extends very well to
6 contractors and energy consultants who, remember, are
7 required right now to already register documents with
8 providers.

9 Again, if we have proliferation of partial
10 providerships, then the energy consultant might need to
11 register with one provider their CF1R for Title 24
12 compliance, and then transfer it to the other one that
13 does NHSP, only. And there's a lot of room for
14 additional confusion and multiple layers in the
15 marketplace that don't really help achieve the goals of
16 efficiency and standardization.

17 Similarly, for building departments as well, the
18 exact same arguments, and that's it.

19 MR. MICHAEL BACHAND: That's all I have.

20 COMMISSIONER MC ALLISTER: Great, thanks for
21 that.

22 MR. GOMEZ: Don Charles?

23 MR. CHARLES: Yeah, this is Don Charles with
24 USERA. I'm perfectly happy with the way it is now. I
25 don't see where any of the issues, per se, that were

1 raised have been demonstrated a particular problem or
2 issue. And, you know, I can understand maybe moving
3 forward possible concerns with future providerships, or
4 whatever, but I don't see where it's a problem.

5 The providers that want to use us for what we do
6 come to us, and there are solutions in the market for
7 other, broader solutions, should they need them. But I
8 don't particularly see where any issues have been
9 created as it is now.

10 COMMISSIONER MC ALLISTER: Thanks for that.

11 So, I guess I would ask if -- I wasn't as
12 directly involved in these discussions, as many of the
13 staff was. Many of the staff members were sort of in
14 the determining, sort of how we're bringing -- how we're
15 considering applications for new providers.

16 And if there's any more drilling that needs to
17 be done on this, I think I'm probably not the one to do
18 it. So, maybe, now or later if the staff can come back
19 with additional questions on this stuff, if we still
20 have doubts.

21 MR. GOMEZ: Commissioner, I think the questions
22 that we've put together were answers that we needed to
23 have and we'll work with the stakeholders.

24 COMMISSIONER MC ALLISTER: The marketplace has a
25 lot of difference nuance to it, so you've got to

1 anticipate. It could potentially require a bit more
2 discussion, anyway. But, hopefully, you can reach out
3 if that's the case.

4 MR. GOMEZ: Yeah.

5 COMMISSIONER MC ALLISTER: Okay, thank you very
6 much.

7 MR. GOMEZ: Do we want to move, now, to raters
8 participating in this discussion?

9 MR. NESBITT: Right, you're all ceding time to
10 me, correct?

11 MR. GOMEZ: George, please state your name.

12 MR. NESBITT: George Nesbitt, Environmental
13 Design Build.

14 Rob Faulk, from NCI, told me that in some states
15 he gets paid to become a HERS provider. My
16 understanding is that RESNET developed a core registry
17 that all the providers use. And I think these are
18 important things to think about.

19 If a provider, just take the new home end, so if
20 I get re-certified through CHEERS, I'm not certified,
21 yet, for PV or other portions of a new home. That means
22 I am now going to have to pay certificate fees to be
23 able to complete a job with two providers.

24 I'm going to have to be trained and pay to be
25 certified through two providers. So, that's a downside.

1 But I think the cost of becoming a provider is
2 so high, Rob Faulk put it at six hundred to seven
3 hundred thousand dollars is what it would have cost to
4 become a provider in California.

5 So, I don't think we can realistically expect,
6 because of the complexity of approving providers, and
7 the cost, that they can come in and be approved for
8 everything up front.

9 But I think long term the goal should be that
10 they offer multiple certifications. Not necessarily
11 every single one, perhaps.

12 But I have to tell you that I've paid for
13 training with providers for something that I was not
14 able to get certified for, so I paid -- I've paid twice
15 over a decade to become a whole house rater with CHEERS,
16 the old CHEERs.

17 I went through it five years ago in anticipation
18 of the HERS 2, phase 2 rulemaking, obviously, that
19 hasn't happened.

20 A lot of CBPCA raters have been through training
21 to become training and all they're certified for is
22 alterations and change-outs.

23 That is an expense and a disservice to the
24 rater.

25 The consumer, you tell them they need to go get

1 a HERS rater. So, where do you send them? To three
2 providers with no differentiation between the rater you
3 need, you can only get it at this provider.

4 I've advocated in the past for what we need is a
5 common listing of all raters. No one hires a provider.
6 My customer does not hire a provider. They hire a
7 rater. We raters choose what provider, if we have a
8 choice, what provider we work with. So, in that sense,
9 you know, that should be up to us.

10 And I think the other thing is what there isn't
11 easy -- if I need to change providers or want to change
12 providers, I've already been through an approved
13 training program, I've already been certified, yet I
14 have to get re-certified, essentially, pay for a
15 challenge test.

16 And so, there's definitely issues here, you
17 know, so those are my thoughts.

18 COMMISSIONER MC ALLISTER: Great, thanks very
19 much.

20 I actually have to head over to the Legislature,
21 so I'm leaving you in the capable hands of Commissioner
22 Douglas. So, thanks to her for holding down the fort
23 here. This is a really important topic and I just got
24 unavoidably double-booked here. I'd really like to
25 stay.

1 But also, please, utilize Patrick, and Hazel,
2 and Jennifer as a resource, also, to follow up after
3 that, if necessary. As well as, of course, staff, Pedro
4 and his staff, so Pedro, Jim, and the other staff on
5 this.

6 So, please proceed and good luck on the rest of
7 the sessions.

8 COMMISSIONER DOUGLAS: So, go ahead.

9 MR. NESBITT: Yeah, I basically, I think,
10 completed my thoughts and if you have any questions, or
11 if I come up with anything else I'll --

12 COMMISSIONER DOUGLAS: Not right now. Thanks a
13 lot.

14 Other raters with comments? Go ahead.

15 MR. BERIAULT: Eric with EnerGuy. So, actually,
16 I want to thank staff for adding this to the agenda
17 because it wasn't originally on there. And I think it's
18 good to have the conversation. It's obviously a big
19 change and I hadn't really thought much about it
20 beforehand, but it really made me think a lot about the
21 providership, and where it's going, and where it can go.

22 So, I'm not opposed -- I'm not opposed to it
23 being segmented. I think it might be -- it's definitely
24 a good thing to look into.

25 One of the biggest challenges that we have,

1 let's say, in the alternations market right now is that
2 there's very low compliance. And if there's a provider
3 that's only focusing on the alterations market, and
4 they're dedicating all of their energy into increasing
5 the compliance, and helping raters increase the
6 compliance, then maybe that's a benefit to the consumer,
7 to the rater, and to the provider, because that's all
8 they're worried about. That's all they're dealing with.

9 If it were to get split up into different
10 segments, obviously there would be a specific order
11 where you could become a provider -- you know, you
12 couldn't become a HERS 2 provider without first being a
13 provider for alterations. So, it would have to make
14 sense.

15 I think at the very least, I think it would be
16 neutral for consumers because they really -- they don't
17 really know or care if it's CBPCA, CHEERS or CalCERTS.
18 You know, they're not -- that doesn't matter to them.

19 I think it's the job of the raters and the
20 providers to bring the information to them and to make
21 it evident what the benefits are.

22 So, by having more people specializing in
23 certain areas, you know, it's hard to think that we
24 couldn't benefit from that.

25 Yeah, I think that's pretty much it for that.

1 Thank you.

2 COMMISSIONER DOUGLAS: Thank you.

3 Other comments from raters?

4 All right, we've also got -- I don't see any
5 other comments from raters.

6 We've also got builders or HVAC installers, or
7 other public comments on this item? Okay.

8 MR. GOMEZ: No comments online, either.

9 COMMISSIONER DOUGLAS: Okay, so Pedro, help me
10 here, so are we on Item 4?

11 MR. GOMEZ: We are now on the item previously
12 scheduled, which is conflict of interest.

13 COMMISSIONER DOUGLAS: Great. All right.

14 MR. GOMEZ: So, we invite the providers to
15 please come forward.

16 COMMISSIONER DOUGLAS: All right, so go ahead.
17 Are there any volunteers to start on this item?

18 MR. MICHAEL BACHAND: Are you volunteering
19 yourselves or are you volunteering me?

20 MR. HODGSON: I'm volunteering you, Mike.

21 MR. MICHAEL BACHAND: Okay.

22 COMMISSIONER DOUGLAS: Go ahead.

23 MR. MICHAEL BACHAND: Nice to see you at the
24 table.

25 The conflict of interest is, you know, exploring

1 the need for updating the HERS regs to more clearly
2 define the role of a provider when the provider is
3 involved in other aspects of the building construction
4 industry.

5 And I really think there are several levels of
6 conflict of interest, one of them is the one that's in
7 the regs already, which is all about the rater can't do
8 the -- be the installer, and so forth.

9 It's my feeling that those need some fixing,
10 too, but that's for a different day.

11 This is about, I think, providers and the fact
12 that CHEERS approved under partial circumstances, as I'm
13 going to call them, characterize them the way I want to.

14 But the question is, "Should the regs prohibit
15 raters from performing HERS verification on homes for
16 which they were the energy consultant?"

17 You know, I think it's a pretty obvious
18 argument, there needs to be separation somehow. The
19 question is, is there real separation? And if there
20 isn't real separation, what would it take to get real
21 separation? That's what conflict is all about.

22 We're not sure what all those methods might be.
23 We'd like to sit at the table and be part of the
24 conversation. Other than that, we don't really have a
25 real strong opinion one way or the other, other than

1 avoiding conflict.

2 "Should providers be prohibited from accepting
3 compliance documentation or rating data from work
4 performed on homes where the provider manages the above
5 code rating system?"

6 We do see a potential for conflict there. We
7 feel there should be an arm's length transaction between
8 the raters work and the provider who provides the
9 rebates, or approves that the job was done correctly, so
10 that the rebate-providing organization, let's just say
11 IOUs, for instance -- they need to all be separate
12 entities so that they cannot be influencing one or the
13 other outcomes.

14 Program managers have requirements that the IOUs
15 set on them by rebate-providing programs which could
16 affect the provider's data. Potentially, everybody's
17 all honest here and we all know that but, you know, tie
18 up your camel. Trust in God, but tie up your camel.
19 So, check and verify.

20 "Should providers be prohibited from accepting
21 compliance documentation or rating data for work in
22 which an affiliate company has prepared or conducted" --

23 If the Masco debacle did not answer that, then
24 nothing did. Masco was all about affiliations, and
25 corporate veils, and all of that. The Energy Commission

1 just stuck a spear right through all of them and said
2 no. Affiliates are affiliates. If the money flows, the
3 money flows.

4 So, we believe that should be prohibited.

5 Getting on further down, "Providers are
6 prohibited from accepting compliance documentation for
7 work in which the affiliate company has conducted the
8 analysis for the compliance documentation?"

9 We feel there, again, is great potential for
10 conflict of interest there. This item has been beat up
11 over the years at the Commission at different times.
12 Different people have had different feelings about, oh,
13 I'm a compliance jockey, so I say you need all these
14 HERS tests. Oh, and by the way, I'm a HERS rating
15 company. So that's, you know, been the model for a long
16 time.

17 And we just think that should be revisited in
18 light of the current events and all of the things that
19 are going to be considered into the program.

20 None of these five questions that we're talking
21 about are happening in a vacuum, they're all going to be
22 worked on together, so I think they have interplays that
23 should not be ignored.

24 I was not quite sure on the one that said, "CEC,
25 should contractors or their affiliates be prohibited

1 from performing ratings?"

2 I wasn't sure what contractors they're talking
3 about. Is that installing contractors or general
4 contractors? This sort of flies a little bit in the
5 face of the BPC concept. So, BPC means building
6 performance contractor, for those that might not be
7 aware.

8 So, we would like a little clarification on what
9 this question's actually trying to ask.

10 MR. GOMEZ: One second, Mike.

11 COMMISSIONER DOUGLAS: Pedro, are we having
12 technical difficulties?

13 MR. GOMEZ: No, we're trying to clarify the
14 question that Mike's asking. Give us one second.

15 MR. MICHAEL BACHAND: Say yes, Pedro.

16 COMMISSIONER DOUGLAS: I'm sorry. I wanted to
17 make sure the people online understood why there was a
18 moment of silence here.

19 MR. GOMEZ: Yes, we have not gone away.

20 MR. HOLLAND: Hi, this is Jim Holland at the
21 Energy Commission. What this means is some contractors,
22 some firms have subsidiary companies that perform HERS
23 ratings. There's no prohibition of having such a setup
24 as long as that subsidiary that does HERS ratings does
25 not HERS rate its own parent company's installations.

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1 So, that's what this is addressing. Not clearly enough,
2 apparently.

3 MR. MICHAEL BACHAND: Let me see if I
4 characterize it correctly. A company does many
5 different jobs and has different companies under it.
6 So, one of them is a contracting company. Another one
7 might be a rating company. And another one might be a
8 grocery store.

9 MR. HOLLAND: Right.

10 MR. MICHAEL BACHAND: And related to the work
11 that the contracting affiliate is doing, are they
12 separate enough from the rating firm that is also an
13 affiliate.

14 MR. HOLLAND: Correct.

15 MR. MICHAEL BACHAND: Yeah.

16 MR. HOLLAND: So, they can have those companies
17 as long as they don't intermingle amongst their own
18 work.

19 MR. MICHAEL BACHAND: Yeah, the mantra has
20 always been follow the money. And in the Masco case
21 that was the case, and the money went to the guy who
22 owns the grocery store and everybody else. Our answer
23 would be no.

24 MR. HOLLAND: Right and --

25 MR. MICHAEL BACHAND: We don't think that's -- I

1 don't know whether it's negative or positive. We think
2 it's not a good idea to do that.

3 MR. HOLLAND: And there's nothing explicitly
4 prohibiting it. So, the question is should there be,
5 basically.

6 MR. MICHAEL BACHAND: Yes.

7 Charlie has a comment.

8 MR. CHARLIE BACHAND: Charlie Bachand from
9 CalCERTS.

10 One of the points about this, from raters being
11 energy consultants to providers being energy
12 consultants, for one thing the conflict of interest
13 rules, as they stand, are not super straightforward and
14 don't really address how you can remedy a problem when
15 you see a conflict of interest. Is it subject to
16 discipline, fine, decertification, et cetera.

17 To open the door to any of these categories
18 seems like it opens the door to even more questions
19 about how to define conflict of interest. How a
20 provider can explore if a conflict of interest exists,
21 or how the CEC can explore that and there doesn't seem
22 to be any mechanism in place for that.

23 And what other safeguards there might be against
24 impropriety. It seems to me like it would be opening a
25 very large can of worms to have to write all of those

1 things into the code. And yet, without them, we would
2 really have no assurances against these conflicts of
3 interest arising in improper ways. That's all.

4 COMMISSIONER DOUGLAS: Okay, so next.

5 MR. HODGSON: Good afternoon, Commissioner.
6 Mike Hodgson from CHEERS, I've been relatively quiet
7 today. But since this is the conflict of interest
8 section I wanted to be a participant, since I've had
9 about six months of experience, recently, with CEC staff
10 talking about conflict of interest.

11 Kind of a high level observation and I would
12 agree with Mike Bachand is follow the money. If there
13 is a direct financial tie, then it is a conflict of
14 interest and it really doesn't matter where that money
15 comes from.

16 So, that's really kind of our, I think, request
17 to the Commission is we think the conflict of interest,
18 as Charlie's mentioned, the regulations are vague and
19 they can be interpreted in a lot of different ways.
20 Those need to be cleaned up.

21 And at our request, we would specifically say if
22 there's a financial tie, there's a conflict of interest.
23 If there's no financial tie, then there's not a conflict
24 of interest.

25 So, that's fairly simple to say. It's more

1 difficult to put into regulations. But it's a very, I
2 think, straightforward concept on conflict and very
3 doable from a regulatory standpoint.

4 I'll let David address the specific comments and
5 I'm here to answer any of your questions.

6 MR. MEYERS: David Meyers with CHEERS. This
7 will be quick because to Mike's point, if you follow the
8 financial tie, you tie that to the conflict of interest.
9 I think you have your answer.

10 So, for the first question, "Should the
11 regulations prohibit raters from performing HERS
12 verification on homes for which they were an energy
13 consultant?"

14 That one's an interesting one because I don't
15 really see a direct tie there. So, the rater's
16 verifying the installation work, so we would argue that
17 potentially that should be allowed.

18 Mike addressed the second bullet point so I'm
19 going to skip over that one.

20 And the next two, I won't reread them, but
21 again, if there's a financial tie there, then there's a
22 conflict in our mind. So, in both of those situations
23 we would support the prohibition.

24 Anything to add, Jay?

25 MR. LENZMEIER: No.

1 MR. MEYERS: Okay.

2 MR. GOMEZ: Don Charles? Don, are you there?

3 MR. CHARLES: Yeah, sorry, I had my headset on.

4 I understand where they're going with that.

5 You know, as it relates to, you know, a firm
6 maybe owning separate or different companies that are
7 completely unrelated, just because they have the same
8 owner I don't necessarily think represents a conflict of
9 interest.

10 So, I think there has to be some reasonable
11 business practices applied there, some free market
12 practices applied there.

13 You know, I don't think -- you know, if they're
14 companies within the exact same industry, yes, I could
15 see where that might be an issue. But if they're in
16 completely separate industries, I don't think that can
17 serve as a necessary grounds for serving as a conflict
18 of interest.

19 COMMISSIONER DOUGLAS: Thank you. So, anything
20 more on this from providers or should we go on to the
21 raters? Let's go on to the rater comments. Thank you.

22 MR. GOMEZ: Brian, I think you're going to start
23 it this time. Please state your name and your
24 affiliation.

25 MR. SELBY: Brian Selby with Benningfield Group.

1 As I stated earlier, I am a certified energy
2 analyst, as well as a HERS rater. For years I've
3 performed Title 24 compliance documentation, since I'd
4 say the mid-eighties. And probably right before 2000
5 became a HERS rater.

6 The advantage of a HERS rater being an energy
7 consultant is very valuable out in the field.

8 I don't know too many people here who have done
9 HERS ratings and discovered that the job was installed
10 exactly the way it was on the CF1R. It is almost
11 impossible. I wouldn't say impossible, maybe it's
12 improbable that projects are actually installed the way
13 they're designed.

14 So, having an energy consultant that did the
15 Title 24 documentation for a particular project involved
16 and aware of what was originally designed, spot what is
17 actually installed, and be able to make those
18 corrections on the fly without having to involve
19 somebody else is extremely valuable, and a streamlined
20 process.

21 COMMISSIONER DOUGLAS: Thank you.

22 MR. GOMEZ: Dave?

23 MR. HEGARTY: Dave Hegarty, DuctTesters.

24 Commissioner Douglas, we probably have a little
25 bit more of a knowledge of this, than most people, being

1 in the Masco situation that was some years ago.

2 It is about following the money and that took
3 some four or five years to really bring to fruition when
4 I thought the rules were very clear in the regulations.

5 So, I'm not sure I understand why there's a need
6 to change them. I think some people are wanting them to
7 be different than they are and that's why they want them
8 opened up. But if you follow the money, in any case,
9 when those kinds of things happen you understand where
10 the conflicts can be. And that was a major conflict
11 issue.

12 And I might add that they were doing the
13 inspections wrong at the time, as well as the
14 installation so, that's why I brought -- actually,
15 California Living and Energy brought that because we saw
16 not only the conflict but the actual abuse that was
17 going on.

18 So, more to the point of what we have here, I
19 agree with Brian's synergy in the fact that when you
20 build a -- especially in multi-families, we're very
21 familiar with, your HERS rater and your energy
22 consultant need to be up front in the very beginning of
23 the project. And that is a very good synergy,
24 especially when either the firm or the rater or energy
25 consultant, slash energy consultant are the same one, so

1 I agree with that.

2 And as to the second bullet point and my last
3 engagement here, I agree that the providers should be
4 allowed to do the above-code programs. Thank you.

5 MR. GWIAZDON: All right, Dan Gwiazdon, Energy
6 Conservation Pros.

7 The answer to number one, I would say no. The
8 future of this program, it has to be something that's
9 workable for the consumer. If the consumer -- if their
10 life gets more difficult through regulation, that's just
11 going to slow the process down and make it more
12 expensive for them, and everything else.

13 And to become a HERS rater and a building
14 performance contractor it's a significant investment in
15 time and money for an individual to get certified.

16 That does create some responsibilities on your
17 part that could be managed through the QC process. If
18 I'm a building performance contractor, and I'm the
19 energy consultant, and I recommend some actions be taken
20 by the consumer, I reserve the right to be able to do
21 those actions and be totally responsible for that whole
22 project from beginning -- from start to finish.

23 The consumer wants that. They don't want to
24 have to deal with 18 different people. They want to
25 deal with one person, and get their work done and move

1 on.

2 So, I say a big no to number one.

3 And on the last item, again, it kind of follows
4 if I am the building performance contractor, by
5 definition I'm going to do the work that I'm
6 recommending. And I don't see that as a conflict of
7 interest.

8 I mean, can it be? Probably, but that's true of
9 anything. Anybody can be crooked and anybody can do
10 things wrong, but the standards that the HERS raters are
11 held to I think are pretty tight and pretty stringent.

12 MR. NESBITT: George Nesbitt, Environmental
13 Design Build.

14 RESNET allows you to be a provider, a rater, and
15 a contractor, and have a conflict of interest. The best
16 thing California did was separate provider from rater,
17 from installer.

18 Although with building performance contractor,
19 we've allowed a conflict of interest.

20 The best energy consultants are raters. And I
21 think some of the plan checkers will tell you that.

22 I've actually always felt it was a conflict of
23 interest because I see nothing but crappy energy
24 consulting work and I view my job, as a rater, as
25 verifying everything on the Title -- on the CF1R or the

1 PERF-1. That includes areas. Okay, wall areas, window
2 areas. You change those, you have those wrong, you may
3 not be complying.

4 I've been told that's not my job but, as you can
5 tell, I do what I want sometimes.

6 (Laughter)

7 MR. NESBITT: So, this is kind of complicated
8 because when you approved the new CHEERS console, you
9 prohibited them from doing energy consulting and putting
10 it on their registry, as well as programs they
11 administer from going on their registry.

12 So now, if I'm a CHEERS rater, I can't get that
13 job. So, now you're going to punish me because they
14 have a conflict of interest or a perceived conflict of
15 interest. So, it's not that simple.

16 We see energy consultants that lie. I mean,
17 their whole job is to get rid of the HERS rater,
18 typically, first off.

19 You know, so it's -- there's definitely
20 potential and I've also felt that like, you know, you
21 had CBPCA being a HERS provider, program administrator,
22 third-party quality control and, quite frankly, you
23 know, when a provider has other businesses that are
24 involved, I mean, I kind of see that a potential big
25 conflict of interest that they then -- they're

1 driving -- they can drive that work to their provider.
2 So, we don't want that, but we shouldn't punish the
3 rater at the same time. So, this is difficult.

4 And then also, you know, as raters we often get
5 our work through the installers. And so when you fail
6 people, they don't call you back, so that's sort of
7 another layer that you didn't even ask about. You know,
8 and it's something we all face is that, you know, when
9 we fail people they usually deny it, and call you
10 incompetent, and they go get someone else whether they
11 actually have the authority to hire the rater.

12 So, this is a big issue.

13 MR. GOMEZ: Next, please.

14 MR. FLORES: John Flores, Valley Duct Testing.
15 I just want to make a comment regarding the number one
16 item on there, regarding raters performing HERS
17 verifications and being an energy consultant.

18 I don't know if the other raters in the room run
19 across this but we get a lot of calls from homeowners,
20 homeowner builders, small builders call up and say, hey,
21 I just went to get my final inspection done and we need
22 this HERS thing, can you help us with it.

23 So, we say give us your Title 24s. We look at
24 it and the house is completed, and it has QII on it.
25 The homeowner didn't know what that meant. The

1 contractor didn't know what that meant.

2 But if we were involved from the start on that
3 house, doing the Title 24s, we would make everybody
4 aware of it and every consultant would do the same
5 thing, make everybody aware of the time frames when
6 things need to be done.

7 So, to tie those things together makes it really
8 simple. And we're actually starting a division of our
9 company doing that for small builders, and architects,
10 and things to try to help them get through that process.

11 And I just think it's a good tie there to have
12 both of those together because a lot of these
13 consultants, they do their job, they turn them in and
14 then they wash their hands of them and they're on to the
15 next job. Where we wouldn't be there, we would be able
16 to follow through on the complete process.

17 MR. LILLY: Bill Lilly, California Living and
18 Energy. When I heard the name Masco mentioned several
19 times, I had to come up here and say something because I
20 was intimately aware of this, and started this with an
21 e-mail to Bill Pennington in 2002, and it took six
22 years. And I'm thankful for Mr. Hegarty to come over
23 and help me the last year and a half.

24 So, I am intimately aware of all the hassles and
25 all the litigation.

1 And there is a conflict. It is not the same as
2 it was with the Masco situation. And it does, like
3 everybody's mentioned here, there is an advantage to
4 being both because we do have intimate knowledge of the
5 calculations and the HERS rating.

6 And you can't equate this with Masco and for six
7 years it took me to bring it fruition, and it's not the
8 same at all. So thanks, that's it.

9 COMMISSIONER DOUGLAS: Thank you.

10 Other comments from raters.

11 MR. NESBITT: George Nesbitt.

12 COMMISSIONER DOUGLAS: George.

13 MR. NESBITT: The whole idea of the whole house
14 rater is we took the energy consultant and the HERS 1
15 rater and we put them together. That's the whole house
16 rater, the HERS 2 rater.

17 So, if we perceiving energy consulting and
18 rating to be a conflict of interest, what we should be
19 doing, and this is -- the utility rebate programs should
20 really be recognizing us HERS 2 raters as an equivalent
21 to their requirement for the CEPE, Certified Energy Plan
22 Examiner, from CABEC.

23 So, because that test, it's an easy test. And
24 like I say, we see nothing from bad work. I mean, I've
25 seen those Title 24s that required HERS, and QII, and

1 nobody told anyone, or just the lies. I've seen
2 outright lies by energy consultants and, you know, it
3 hasn't mattered whether they're CEPES or not.

4 So, the whole house rater would be -- you know,
5 if we want to address it, that's the most appropriate
6 certification because we get tested and we do have QA.

7 MR. SELBY: I'd like to add one comment, Brian
8 Selby from Benningfield Group.

9 My colleague, to my right here, mentioned
10 something about being a building performance contractor
11 and the energy consultant. I don't see any problem with
12 that as long as he has an independent HERS rater that
13 wasn't connected with it do the actual verification of
14 the installation. I don't think that was really
15 mentioned in any of the comments, that combination of
16 the building performance contractor and energy
17 consultant but --

18 MR. NESBITT: George Nesbitt. The Title 20
19 regulations say that the building performance contractor
20 is not exempt from third party HERS rating if that is
21 required under the Code or on the CF1R. That portion
22 they're not exempt from. But others, some have thought
23 they were.

24 MR. GWIAZDON: Can I have one more thing, Dan
25 Gwiazdon, Energy Conservation Pros.

1 To that point there is a validation process for
2 that building performance contractor's work that's done
3 by an independent, third-party HERS test out. But the
4 relationship that you build with the customer, when
5 you're going in and doing the energy consulting, and
6 putting this plan together for them, that's invaluable.
7 I mean, you're selling yourself, and your
8 professionalism and your expertise. And to just have to
9 hand that off to somebody else that you don't -- you
10 have no idea who you're handing it off to is a crime. I
11 mean, you want to be able to control that from the
12 beginning to the end. Thanks.

13 COMMISSIONER DOUGLAS: All right, thank you all
14 very much.

15 Let me see if there are any other comments on
16 this item. It does not look like there are other
17 comments on this item. Oh, one comment. Go ahead.
18 Perfect.

19 MR. CHRISTIE: My name's Matthew Christie. I'm
20 with Hescong Mahone Group, now a TRC company, and we
21 are implementers of the above-code programs that have
22 been spoken about quite a bit, as well as just general
23 fans of the entire industry's existence.

24 All of the above issues, conflict of interest,
25 QA, my comments are a little more general, focusing on

1 the whole if it, as well as the disciplinary process.

2 When there's a good HERS industry, there's a
3 huge follow-through on that with the way the above
4 programs can leverage that industry and create better
5 energy savings, better programs, save hundreds of
6 thousands of dollars of internal QA for the utilities,
7 and the other entities that are running programs.

8 The HERS industry is doing more for programs
9 than just verifications. They're also doing builder
10 outreach. They're also doing, you know, customized
11 program support with the registries, themselves.

12 I mean, the work that Hugo has done on behalf of
13 programs to have a functional registry, and the work
14 that Dave Meyers and his team are starting to do is
15 absolutely insurmountably necessary for these above-code
16 programs and for the Energy Commission's greater long-
17 term of Net Zero that we're driving towards.

18 The key to it all, though, is that the programs
19 can have a trust and a faith in the HERS industry as a
20 whole. And for that to be possible, that allows us to
21 pull back on our own QA needs, trust the industry to
22 support itself and QA itself, and have its own
23 disciplinary sections, and conflicts of interest already
24 worked out.

25 And in doing so, in building that faith we need

1 a standardized system that's totally transparent, that
2 has third-party arbitration opportunities when there is
3 a conflict of interest, or a QA fail, or a disciplinary
4 fail.

5 When all that is set up well and good programs
6 and compliance, itself, can just leverage that existing
7 world, but it needs to be standardized, transparent, and
8 have a third party.

9 And once that faith is built, the money that
10 will be put into that comes back tenfold in saving
11 ratepayer dollars for having to pay for a second time, a
12 third time from the programs, themselves, or from
13 compliance, or building departments.

14 COMMISSIONER DOUGLAS: Thank you. Thanks for
15 your comment.

16 Other comments from members of the public,
17 builders, installers, or others on this item? It
18 doesn't look like it.

19 Pedro, anything online?

20 MR. GOMEZ: No, nothing online.

21 I think, maybe if you would allow, maybe open it
22 up to comments from anyone in the audience in regards to
23 the HERS program. If there's anything -- I know I
24 talked to some people earlier that didn't feel like the
25 topics we were covering were specific enough to the

1 questions or concerns that you have. And maybe if we
2 could allow them to come up and share any of those
3 comments that they have?

4 COMMISSIONER DOUGLAS: Right, so we're in the
5 public comment phase of the agenda, then.

6 Are we doing blue cards or are we having people
7 race each other to the microphones?

8 MR. GOMEZ: Just raise your hand and come to the
9 podium.

10 COMMISSIONER DOUGLAS: Go ahead and raise your
11 hand and come to the podium. Go ahead.

12 And if you know you'd like to make a comment,
13 you're welcome to come forward and just sit down at a
14 microphone, and we'll get to you.

15 MR. GOMEZ: Sir, please state your name and your
16 affiliation.

17 MR. SOTO: I'm Don Soto, Soto Consulting, and
18 also a retired HVAC contractor from 20 years ago.

19 One of the things that the Energy Commission is
20 really striving for is energy efficiency for consumers.
21 And the one thing I think we should push for is duct
22 testing at the point of sale on residential homes.
23 Thank you.

24 COMMISSIONER DOUGLAS: Thank you. Thanks for
25 being here.

1 Other public comment. Go ahead.

2 MR. YOUNG: Hi, Tommy Young, E3 NorCal. And
3 this is actually clarification that I would like. On
4 January 14th, 2011 I had a meeting with Mike Bachand,
5 myself, Eurllyne Gieszler, Jim Holland, Dennis Beck, and
6 I believe somebody else was there, but I can't remember.
7 At that meeting someone from the CEC took notes, and I
8 have their notes. And I really need this clarified
9 because the end of the notes say, "Dennis, Dennis Beck
10 reiterated that it is up to CalCERTS to decide if an
11 infraction has occurred and what punishment is given."

12 And that -- what I was trying to get to at that
13 part of our meeting was is CalCERTS the arbitrator?
14 Basically, Dennis was saying CalCERTS decides what's
15 law. So, those are notes from the CEC and what Dennis
16 said, so I kind of need to know who I call with law
17 questions. That's all. And I'll submit these.

18 MR. GOMEZ: All I can say is without really
19 knowing what the whole discussion was it's hard for me
20 to respond to that.

21 If possible, I don't know if Pippin would
22 comment on it.

23 MR. BREHLER: Sure. This is Pippin Brehler,
24 Senior Staff Counsel with the Commission.

25 I did work closely with Dennis. And what Dennis

1 was getting at, what we've looked at with the regs is
2 that the providers don't say what the law is. However,
3 the provider/rater relationship is a contractual
4 relationship. And so if there's a violation of the
5 provider's HERS program, which it administers, then the
6 provider determines whether that has occurred.

7 MR. YOUNG: True, but I brought up an infraction
8 of a statute. The Title 20 says that any person can
9 bring up -- you know, make a complaint based on a
10 violation of a code or a statute. And so this was a
11 code violation.

12 And Dennis -- it was given the impression to me,
13 at least, that it is up to CalCERTS to decide if a code
14 violation has occurred.

15 MR. BREHLER: It's difficult to sort of give
16 a -- you can't give a straightforward answer to that
17 entire question in the sense that the providers don't
18 get to say what the law is. They can say what their
19 view of the law is and whether that results in some sort
20 of disciplinary action, or some sort of reaction or
21 action against the rater then translates into their --
22 or becomes their contractual action, vis-à-vis the
23 rater.

24 MR. YOUNG: Okay.

25 MR. BREHLER: Whether that has the effect of --

1 and that is not the same as whether a rater or a
2 installing contractor has somehow violated a legal
3 requirement and whether some sort of measure does or
4 does not meet the Energy Code.

5 That is up to the building official to make a
6 determination of and then, if that's challenged, then
7 the court -- a court ultimately would decide whether the
8 law has been broken.

9 MR. YOUNG: Okay, thank you.

10 COMMISSIONER DOUGLAS: Thank you, Pippin.

11 Other comments.

12 MR. FLORES: John Flores, Valley Duct Testing.

13 Today we've talked about a lot of different
14 things and one thing that was brought up just slightly
15 was the homeowner. And we had a situation that I
16 thought I would bring to your attention.

17 We went out and did a job and the job passed,
18 CalCERTS went out and QA'd it, which they were
19 supposed -- you know, which they do. Their numbers were
20 different than ours.

21 So, the homeowner, the Building Department came
22 out and he mentioned it to him. It was in Rio Vista.
23 The Building Department stopped the final inspection.

24 We went back out with the contractor, tested the
25 house again, found out the test was even higher than the

1 CalcERTS test was. The contractor got up in the attic,
2 back in the back corner, a duct was coming off when we
3 were there, but it was good enough to pass. CalcERTS
4 tested it and it was higher. By the time we got out
5 there, the duct fell off.

6 The contractor went up, put the duct back on, we
7 retested it, got the test down to like seven or eight
8 percent, homeowner happy, Building Department happy,
9 everybody won.

10 I think that's really a big thing there is when
11 a job fails there needs to be a system set to be able to
12 do the process like we did. And, you know, everybody
13 was happy on that. So, thank you.

14 COMMISSIONER DOUGLAS: Thank you.

15 Other comments?

16 MR. NESBITT: George Nesbitt, Environmental
17 Design Build. I think I shocked Bill Pennington last
18 year, during the 2013 Code update when I said that --
19 well, I was only going to talk about it once.

20 When I said that Title 20's fundamentally sound,
21 and I believe it is.

22 I think there are minor little tweaks here and
23 there, but I think a lot of the issues we face really
24 come to training, interpretation, enforcement, you know,
25 issues with the software that we deal with, HERS 2, and

1 just even with the Energy Code, testing.

2 The Energy Code says ASTM E 779, which is a full
3 multi-point pressure-to-pressure depressurization test.
4 Nobody has taught it.

5 So, you know, we have standards, but we're not
6 teaching them, we're not enforcing them.

7 We either need to change it or we need to do it.
8 So, a lot of it just comes down to that level.

9 So, as I've often said -- you know, I think what
10 would be important for our industry, and our industry is
11 so important, you can't do it without us.

12 What we really need is a forum for raters,
13 providers, IOUs, program administrators, the CEC, and
14 others to get together, discuss the issues, work on
15 solutions, because a lot of them probably do exist
16 outside of the pure letter. Some of them are in the
17 letter and we do need to change those, but a lot of it
18 is outside of that.

19 So, thank you.

20 COMMISSIONER DOUGLAS: Thank you.

21 Other comments?

22 MR. HODGSON: Mike Hodgson, CHEERS. I just
23 wanted to get up and actually compliment George on
24 making a good statement about having a forum.

25 And I think we've heard today from a very

1 passionate group of people in the industry, who care
2 very much about not only the industry, but homeowners,
3 consumers, and the building industry in general.

4 And I think having re-established a competitive
5 marketplace with the re-entrance and re-emergence of
6 CHEERS, I think it's going to be a competitive
7 marketplace, but a friendly competitive marketplace.
8 And I think the industry is going to improve in quality
9 and stature.

10 But the request that I just heard, which I was
11 going to make myself, is we need a leadership role in a
12 forum from the Commission. And that is you have the
13 authority to get us in a room and the interest of us to
14 get into a room to discuss issues.

15 I think there were a lot of issues brought up
16 today and there's no way we can tackle them all at the
17 same time.

18 So, with another meeting or a prioritization of
19 the issues that we have here today, that would really
20 be, I think, a step forward to the industry in general
21 if you could provide that leadership, your priority that
22 we could respond to and have input into, and then a
23 regular group of interested parties that try to work
24 through these issues.

25 I think that would be good for the industry, it

1 would be good for the health of the industry, but it
2 would also be good for the enforcement of the standards.
3 Thanks.

4 COMMISSIONER DOUGLAS: Thank you.

5 MR. NESBITT: George Nesbitt. I just -- no, I
6 just want to follow up, and outside of these kinds of
7 proceedings because there are limits to these workshops
8 and to the regulatory process, that it's not just, you
9 know, okay, come to this meeting, give our three
10 minutes.

11 So, it's advisory council, or whatever you call
12 it, whatever the legal term and structure that allows us
13 to work together without all the confines, that we may
14 then have to ultimately go through to make some of the
15 changes.

16 MR. MICHAEL BACHAND: Mike Bachand from
17 CalCERTS. This is a comment not about George Nesbitt.
18 It's nothing personal, George.

19 I agree with what Mike Hodgson said that we need
20 a little bit stronger leadership. In 2010, CalCERTS
21 paid a lot of money to Mindy Craig and her marketing
22 firm to help us put on four rater forums up and down the
23 entire State. We advertised them heavily to our rater
24 base. Oddly enough, they weren't all that well
25 attended, some more than others, and depending on

1 location, and time, and setting, and whatever day of the
2 week it was, and so forth.

3 But the ones that were well attended there were
4 lots of comments, and most of them were forward,
5 positive comments, a lot of them talked about market
6 transformation, and other things that are on everybody's
7 plate, and rightly so.

8 There was not a lot of complaints. There were
9 some, of course, and so we addressed what we could and
10 beyond that.

11 But the point is that forum didn't quite carry
12 enough strength. And so I'm throwing my hat in Mike
13 Hodgson's ring for the moment, anyway, to say, yeah, I
14 think better leadership, you know, with a little bit
15 more authority and the ability to do -- make substantive
16 changes that come out of an advisory situation like
17 that, or a conversational group, and it must be ongoing.

18 It's like, you know, we've raised a lot of
19 issues here and there's more spiders in the closet than
20 we've uncovered today, and so they will come out and
21 that's a good thing.

22 So, thank you very much for this opportunity.
23 We appreciate it, we embrace it, and let's move forward.

24 And by the way, could we get some kind of an
25 idea how the next -- so, docketing until the 20th and

1 then what happens; can we get a little discussion on
2 that?

3 COMMISSIONER DOUGLAS: Thank you. Go ahead.

4 MR. GWIAZDON: Can I just add one small comment?
5 Is there a vehicle, for those of us that aren't real
6 good public speakers, that we could submit responses in
7 writing, or e-mail, or something to the Commission?

8 COMMISSIONER DOUGLAS: Pedro, can you go through
9 some of that? Are we doing written comment on this?

10 MR. GOMEZ: Yeah, I think Pippin's going to
11 speak to that.

12 COMMISSIONER DOUGLAS: Pippin.

13 MR. BREHLER: The informational proceeding
14 remains open. The docket is going to remain open. As
15 Commissioner McAllister mentioned this morning, we are
16 keen on the idea of targeted working groups so we can
17 continue this dialogue.

18 Even though a rulemaking may spring from this,
19 we're not in that mode, yet, under the Administrative
20 Procedure Act, so we don't have deadlines, and
21 timelines, and things, which is good because it gives us
22 a lot of flexibility to continue to work through that.

23 And so, as staff and the Commissioners take all
24 the information that has been docketed, all the comments
25 today and digest it, they'll determine what next steps

1 to take.

2 If there are broad, open meetings or workshops
3 those will be publicly noticed. If there are targeted
4 workshops for different folks, those will be noticed as
5 well so that folks who are interested can participate.

6 COMMISSIONER DOUGLAS: Thank you.

7 More comments? Anyone else?

8 All right, then anyone on the web? No, okay.

9 So, I'd like to thank all of you for being here.
10 As has been noted, there is a tremendous amount of
11 commitment to this program and interest in this program
12 and so I definitely appreciate seeing that. I know
13 Commissioner McAllister does, too.

14 So, I'd like to thank you for being here.

15 Patrick, any closing comments?

16 MR. SEXTON: No, I don't think so.

17 COMMISSIONER DOUGLAS: No. Pedro, anything?

18 MR. GOMEZ: No, I just want to follow up on what
19 Pippin's last comments were, that we will be looking to
20 develop some working groups to tackle the five topics
21 that we talked about today a little further, and any
22 other problem that comes up. We'd like to get all
23 stakeholders' input in developing the solution.

24 COMMISSIONER DOUGLAS: Great. So, with that
25 then, I'd like to thank you again, and we're adjourned.

