



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

**DOCKET**

**12-CAI-1**

DATE APR 20 2012

RECD. APR 20 2012

*IN THE MATTER OF*

***COMPLAINT AGAINST AND REQUEST  
FOR INVESTIGATION OF CALCERTS, INC.***

Docket No. 12-CAI-01

**NOTICE OF PREHEARING CONFERENCE  
AND  
EVIDENTIARY HEARING**

**PLEASE TAKE NOTICE** that the Committee designated by the Energy Commission to conduct proceedings on the complaint and request for investigation brought by Erik Hoover and Patrick Davis (Complainants) against CalCERTS, Inc. (Respondent), has scheduled a prehearing conference and an evidentiary hearing as follows:

**The Prehearing Conference will be conducted on:**

**TUESDAY, MAY 8, 2012  
Beginning at 8:00 a.m.**

**California Energy Commission  
Hearing Room A  
1516 Ninth Street  
Sacramento, CA 95814**

**The Evidentiary Hearing will be conducted on:**

**FRIDAY, MAY 11, 2012  
Beginning at 11:00 a.m.**

**California Energy Commission  
Hearing Room A  
1516 Ninth Street  
Sacramento, CA 95814**

## **Teleconference Option**

Parties and the public may attend the prehearing conference and evidentiary hearing in person at the above locations or by telephone and/or by computer via our "WebEx" web conferencing system. For details on how to participate by WebEx, please see the **"Participation in the Prehearing Conference and Evidentiary Hearing through WebEx"** directions attached to this notice.

## **Background and Procedure**

On February 15, 2012, Complainants filed a *Complaint Against and Request for Investigation of CalCERTS, Inc.* ("Complaint"). The Complaint alleges CalCERTS, Inc., a Provider, violated the Energy Commission's Home Energy Rating System (HERS) regulations and improperly revoked the Complainants' Rater certification.<sup>1</sup> The HERS regulations are found at California Code of Regulations, title 20, sections 1670 through 1675. The Complaint is based in part on Regulations sections 1673, pertaining to quality assurance processes and complaint response systems.

The HERS program establishes criteria for a statewide home energy rating program. Under the program, home energy rating system organizations that are approved by the Energy Commission (called "Providers") administer a home energy rating system. Providers are responsible for training, testing, and certifying "Raters," who perform the tests necessary to establish HERS ratings.

The Complaint asks the Commission to grant the following relief:

- 1) Immediately reverse the decision of CalCERTS to decertify Erik Hoover and Patrick Davis.
- 2) Investigate the way CalCERTS imposes discipline upon HERS raters who are alleged to have made mistakes.
- 3) Require CalCERTS to adopt a written discipline procedure that complies with the HERS regulations, and with the constitutional requirements of due process.

By an order dated March 5, 2012, the Commission Chair directed the Commission's Chief Counsel's Office to serve the Complaint on Respondents. As provided in the Commission Regulations, Respondent had 21 days from the date of service to file an answer to the Complaint. Respondent filed a timely Answer.

## **Purpose and Scope**

During the prehearing conference, the Committee will assess the parties' readiness for an evidentiary hearing, identify areas of agreement or dispute, and discuss the remaining schedule and procedures necessary to conclude the complaint and investigation process. Also during the prehearing conference, the parties shall identify

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<sup>1</sup> The Complainants' and Respondent's respective addresses are contained in the Complaint and, Answer and, incorporated herein by this reference. (Commission Regulations, § 1234, subd. (b)(1).)

exhibits, proposed witnesses, the time required for direct testimony and/or cross-examination, and a proposed post-hearing briefing schedule.

The evidentiary hearing will facilitate the Committee's evaluation and adjudication of the Complaint's allegations. Within 21 days after the hearings conclude, the Committee will issue a proposed decision on the Complaint allegations and requests for relief. The proposed decision could possibly grant or deny some or all of the requested relief. The proposed decision will subsequently be considered by the full Commission at a noticed proceeding. (Commission Regulations, §§ 1234 – 1235.)

To facilitate the hearing process, each party shall serve and file a **Prehearing Conference Statement**. The statements shall be received by the Hearing Adviser and other parties on the Proof of Service list and the Commission's Docket Unit, 1516 9th Street, MS-4, Sacramento, California 95814-5512, by **12:00 Noon on Friday, May 4, 2012**. The parties shall also submit Microsoft Word versions of their statements, including the exhibit list, to the Hearing Adviser via e-mail.

Each Prehearing Conference Statement shall include:

1. A summary of the legal and factual questions presented by the Complaint and Answer.
2. The identity of each witness sponsored by the party; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness.
3. An exhibit list identifying exhibits and declarations that each party intends to offer into evidence, provided in the format attached to this notice. The Hearing Office can provide the parties with a Word version of the exhibit list template.
4. Proposals for post-hearing briefing deadlines.
5. Comments, if any, on the Committee's possible use of informal hearing procedures as described below.

### **Format for Presenting Evidence**

Each document shall be numbered and identified on the exhibit list as follows:

- **Complainants'** exhibits shall be numbered consecutively as **Exhibits 1 through 100**.
- **Respondent's** exhibits shall be numbered consecutively as **Exhibits 200 through 299**.
- **Commission staff's** exhibits, if any, shall be numbered consecutively as **Exhibits 300 through 399**.

Copies of the exhibits shall be served on the persons identified in the proof of service list and in the manner specified by the list, by **no later than 12:00 Noon on Friday, May 4, 2012**. Electronic copies of the exhibits shall be filed with the Docket Unit **no later than 12:00 Noon on Friday May 4, 2012**. In addition, hard copies of all exhibits shall be provided to the Hearing Adviser by **no later than 12:00 Noon on Friday, May 4, 2012**.

To the extent feasible, submit electronic copies of the exhibits in a manner where there is an individual file for each exhibit.

### **Notice of Committee's Intention to Use Informal Hearing Procedures**

Pursuant to Government Code section 11445.10 et seq. and section 1217 of the Commission's regulations, the Committee may conduct all or portions of the evidentiary hearings in an informal manner. For example, the Committee could allow a panel of witnesses sponsored by a single party or by multiple parties to testify at one time, with an exchange of questions and responses between the witnesses and counsel for the various parties instead of formal direct and cross-examination. Other aspects of the hearing may be conducted informally as well at the discretion of the Committee. Any objections to the taking of testimony or evidence in an informal manner shall be filed on or before the deadline for filing Prehearing Conference Statements (**12:00 Noon on Friday, May 4, 2012**). The parties are encouraged to comment on the format best suited for the hearings and identify the topics for which informal hearings may be appropriate.

### **Petitions to Intervene to Become a Formal Party**

The Energy Commission's Decision on the Complaint will be based on the official evidentiary record developed at the hearing. Only formal parties (Complainant, Respondent, and approved Intervenors) may present evidence and cross-examine witnesses at the hearing.

Anyone with an appropriate interest in the Complaint may file a Petition to Intervene and become a formal party. At the evidentiary hearing, a formal party may offer testimony and documentary evidence, receive documents filed by other parties, and cross-examine witnesses. However, a formal party must also comply with Committee orders, procedures, and filing requirements, and is subject to having its own witnesses cross-examined by other parties.

**The deadline to file a Petition to Intervene in this complaint proceeding is 12:00 Noon on Friday, April 27, 2012.** Petitions filed after that date and time extensions for new Intervenors to review case materials will be granted only upon a showing of extraordinary good cause. Otherwise, Intervenors will take the case as they find it at the time intervention is granted. For example, if the deadline for filing opening testimony has passed, the newly approved Intervenor will not be allowed to file opening testimony. Persons interested in obtaining intervenor status are therefore encouraged to file their petitions as soon as possible.

## How to Intervene

The Energy Commission's Public Adviser's Office will assist any person or organization interested in preparing a Petition to Intervene. For assistance in this process, contact the Public Adviser's Office at (916) 654-4489 or (800) 822-6228 or e-mail: [publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us).

## Agency and Public Participation

It is not necessary to be an Intervenor to participate in the public process. Anyone desiring information on how to participate may contact the Public Adviser's Office as indicated above.

Local, state, and federal governmental agencies may participate at the prehearing conference and evidentiary hearing, as necessary. Elected officials and members of the public may present public comments at these events and/or submit written comments to the Energy Commission's Docket Unit. Please include **"Complaint Against and Request for Investigation of CalCERTS, Inc, Docket No. 12-CAI-01"** on any written comments. **Comments made or submitted after the close of the Evidentiary Hearing will not be considered in the Committee's Proposed Decision.**

## Energy Commission Information

Contact Lourdes Quiroz if you have a disability and need assistance to participate in this event, at (916) 654-5146 or e-mail: [lquiorz@energy.ca.gov](mailto:lquiorz@energy.ca.gov).

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989 or e-mail: [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov).

Questions of a legal or procedural nature should be directed to Kourtney Vaccaro, the Hearing Adviser, at (916) 654-4328 or e-mail: [kvaccaro@energy.ca.gov](mailto:kvaccaro@energy.ca.gov).

Information concerning the status of the project, as well as notices and other relevant documents, may be viewed on the Energy Commission's Internet web page at: <http://www.energy.ca.gov/HERS/12-cai-01/index.html>.

Dated: April 20, 2012, at Sacramento, California.

*Original Signed By:*

KAREN DOUGLAS  
Commissioner and Presiding Member  
Committee re Complaint and Investigation  
Against CalCERTS, Inc.

*Original Signed By:*

CARLA PETERMAN  
Commissioner and Associate Member  
Committee re Complaint and Investigation  
Against CalCERTS, Inc.

PARTICIPATION IN THE PREHEARING CONFERENCE AND EVIDENTIARY HEARINGS THROUGH WEBEX  
THE ENERGY COMMISSION'S ON-LINE MEETING SERVICE

***Computer Log-on with a Direct Phone Number:***

Please go to <https://energy.webex.com> and enter the **MEETING NUMBER** unique to the specific hearing date:

- **5/8/12 – Prehearing Conference meeting number: 926 430 219**
- **5/11/12 – Evidentiary Hearing meeting number: 925 393 149**

When prompted, enter your information and the **MEETING PASSWORD**: **complaint#1**

After you login, a prompt will appear on-screen for you to provide your phone number. In the Number box, type your area code and phone number and click OK. **You will receive a call back on your phone for the audio portion of the meeting.** International callers can use the "Country/Region" button to help make their connection.

***Computer Log-on for Callers with an Extension Phone Number, Etc:***

Please go to <https://energy.webex.com> and enter the unique meeting number and the meeting password (above).

After you login, a prompt will ask for your phone number. Click **"CANCEL."**

Instead call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the **MEETING NUMBER** above and your unique Attendee ID number which is listed in the top left area of your computer screen after you login.

***Telephone Only (NO COMPUTER ACCESS):***

Call 1-866-469-3239 (toll-free in the U.S. and Canada) and when prompted enter the meeting number unique to the specific hearing date:

- **5/8/12 – Prehearing Conference meeting number: 926 430 219**
- **5/11/12 – Evidentiary Hearing meeting number: 925 393 149**

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. To see if your computer is compatible, visit <http://support.webex.com/support/system-requirements.html>.

Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.



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1516 NINTH STREET, SACRAMENTO, CA 95814 - 1-800-822-6228 - WWW.ENERGY.CA.GOV

Docket Number: 12-CAI-01

Date: \_\_\_\_\_

Project Name: Complaint Against and Request for Investigation of CalCERTS, Inc.

**SAMPLE TENTATIVE EXHIBIT LIST**

**NOTE:** The format of the samples provided below is equally applicable to all parties. However, given the likely differences in the documentary evidence submitted by the parties, the samples illustrate how to address specific types of evidence that might be unique to each party.

Exhibit	Brief Description	Stipulation	Offered	Admitted	Refused	CEC Use Only
<b>Complainants' Exhibits</b>						
<b>100</b>	<b>ABC Document;</b> dated [month, day, year] and docketed. (month, day, year), docket number [xxxxxxxx]					
<b>101</b>						
<b>102</b>						
<b>Respondent's Exhibits</b>						
<b>200</b>	<b>ABC Document;</b> dated [month, day, year] and docketed. (month, day, year), docket number.[xxxxxxxx]					
<b>201</b>						
<b>201</b>						



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***IN THE MATTER OF  
COMPLAINT AGAINST AND REQUEST  
FOR INVESTIGATION OF CALCERTS, INC.***

**Docket No. 12-CAI-01  
(EST. 3/23/12)**

**RESPONDENT**

CalCERTS, Inc.  
Mike Bachand  
31 Natoma Street, Suite 120  
Folsom, CA 95630  
[mike@calcerts.com](mailto:mike@calcerts.com)

**RESPONDENT'S COUNSEL**

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Shelby M. Gatlin  
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**COMPLAINANTS**

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**COMPLAINANTS' COUNSEL**

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David Haddock Legal  
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**INTERESTED  
AGENCIES/ENTITIES/PERSONS**

CHEERS  
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Huntington Beach, CA 92648  
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CBPCA HERS Providership  
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**ENERGY COMMISSION  
DECISION-MAKERS**

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CARLA PETERMAN  
Commissioner and Associate Member  
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Kourtney Vaccaro  
Hearing Adviser  
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**ENERGY COMMISSION**

**DECISION-MAKERS (con't.)**

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**ENERGY COMMISSION –  
PUBLIC ADVISER**

Jennifer Jennings  
Public Adviser's Office  
*e-mail service preferred*  
[publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov)



### DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on April 20, 2012, I served and filed copies of the attached NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY HEARING, dated April 20, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: <http://www.energy.ca.gov/HERS/12-cai-01/index.html>.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

*(Check all that Apply)*

For service to all other parties:

- ☒ Served electronically to all e-mail addresses on the Proof of Service list;
- ☒ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail preferred."

**AND**

For filing with the Docket Unit at the Energy Commission:

- ☒ by sending an electronic copy to the e-mail address below (preferred method); **OR**
- ☐ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**

Attn: Docket No. 12-CAI-01  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

***OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:***

- ☐ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

***Original Signed By:*** \_\_\_\_\_

RoseMary Avalos  
Hearing Advisers Office