



CONTRACTORS STATE LICENSE BOARD

BOARD MEETING MINUTES

July 27, 2021, Board Meeting Minutes*

* This Board Meeting was video recorded and live telecasted on the Internet. A copy of the video of the meeting is located on CSLB's website at https://www.cslb.ca.gov/About_Us/Library/Reports.aspx under the hyperlink "July 27, 2021 CSLB Board Meeting", within the "Battery Energy Storage System Classification Studies" section of the webpage link. These minutes refer frequently to the video recording. All references to "video" in these minutes are to the website link above.

A. CALL TO ORDER, ROLL CALL, ESTABLISHMENT OF QUORUM, AND CHAIR'S INTRODUCTION AND APPOINTMENT OF NOMINATION COMMITTEE MEMBERS

Board Chair Susan Granzella called the meeting of the Contractors State License Board (CSLB) to order at 9:00 a.m., Tuesday, July 27, 2021, via teleconference.

A quorum was established. Chair Granzella led the Board in the Pledge of Allegiance.

Board Members Present

Susan Granzella, Chair
Kevin Albanese
Frank Altamura, Jr.
Augie Beltran
Rodney Cobos
Miguel Galarza
Don Giarratano

David De La Torre
Diana Love
Michael Mark
Jim Ruane
Johnny Simpson
Nancy Springer
Mary Teichert*

Board Member Mary Teichert joined the meeting at approximately 9:30a.m.

CSLB Staff Present

David Fogt, Registrar
Tonya Corcoran, Chief Deputy Registrar
Kayla Bosley, Executive Staff
Jessie Flores, Deputy Chief of Enforcement
Michael Jamnetski, Chief of Legislation
Mike Melliza, Chief of Administration
Justin Paddock, Chief of Licensing
Stacey Paul, Budget Manager
Jason Perez, Chief of Information Technology

Department of Consumer Affairs (DCA) Staff Present

Jason Hurtado, Legal Counsel
Shelly Jones, WebEx Host

**B. PUBLIC COMMENT SESSION FOR ITEMS NOT ON THE AGENDA AND FUTURE AGENDA ITEM REQUESTS**

Chair Granzella invited Board Member comment or request for items to be placed on a future agenda. No comments were made. Chair Granzella then invited public comment on this item.

Public Comment

Beginning at 9 minutes 42 seconds into the video recording, multiple public comment requests were made, but all comments were relevant to Agenda Item C. Board Member Beltran, as well as Board Counsel Hurtado and Board Member Granzella all reminded speakers intending to speak on Agenda Item C to reserve their comments to that Agenda item.

C. Presentation from UC Berkeley on Battery Energy Storage Systems Study

At 15 minutes 52 seconds into the video recording, Chair Granzella introduced this agenda item by providing a summary of the Board's actions to date on this topic. Chair Granzella confirmed that in 2018, the Board began looking at the proper classifications to install battery energy storage systems (BESS). Since 2018, several public meetings have been held and the Board directed staff to prepare a report. In March 2019, the Board reviewed the CSLB staff report on energy storage systems and directed staff to begin to develop regulations to present to the Board that would prohibit or restrict certain classifications from performing the installation of BESS. The Board further directed that this matter be assigned to the Legislative Committee.

Chair Granzella continued, stating that on August 6, 2019, the Legislative Committee held a meeting and invited three industry experts to present on the appropriate classifications to install BESS. Several hours of testimony was heard.

Chair Granzella then stated that on November 7, 2019, the Legislative Committee met again and recommended that the Board consider retaining an outside consultant to further study the issue before pursuing regulatory rulemaking. She then stated that at the December 12, 2019 Board Meeting, the Board agreed with the Legislative Committee recommendation to hire an outside consultant. Staff worked with DCA and the Department of General Services to select a qualified consultant to review and make recommendations regarding the appropriate classifications to install BESS.

Chair Granzella concluded the introduction by stating that in December 2020, CSLB entered into contract with the University of California (UC), Berkeley to serve as the consultant. She then invited Board Member Augie Beltran, who was the chair during the 2019 Legislative Committee meetings and continues to chair the Legislative Committee this year, to lead the discussion on this topic.



Board Member Augie Beltran then provided an introduction to the UC Berkeley Study Report Agenda Item. He noted that staff did provide a staff introduction which provides possible options for the Board to consider after the UC Berkeley Presentation.

Board Member Beltran stated that the Board is not bound to select the options provided in the Board Packet by staff and Board members can make any motion they deem appropriate. He stated that as Board Chair Granzella indicated, this issue has been before the Board for more than four years and represents years of hard work by staff and that it is important to note that the Consultant's contract is complete with the presentation of their study today. There are no plans for the study to be modified or for the consultant to perform more research.

Finally, Board Member Beltran noted the study is being presented in response to the Board's December 2019 recommendation that a third-party consultant prepare a research study to assist the Board with deciding about the appropriate classification to install battery energy storage systems. Board Member Beltran then invited Registrar David Fogt to provide the Board background on the selection of the consultant.

Registrar Fogt explained that the Department of Consumer Affairs (DCA) Business Services Office (BSO) has delegated authority from the Department of General Services to enter service contracts on behalf of CSLB.

Registrar Fogt explained that the method chosen to secure this consultant was the Request for Proposal (RFP). Through this method, the contract was awarded to the Bidder with the highest total points, based on the selection criteria, rating scales, and guidelines identified in the Request for Proposal.

Registrar Fogt stated that the steps in the process of selecting the consultant followed requirements set forth by the state contracting rules and were conducted by the DCA BSO, alongside the CSLB evaluation team. He stated that between August and September of 2020, CSLB and DCA BSO engaged in a comprehensive three-phase evaluation process.

Registrar Fogt explained that the first phase of the evaluation process included a committee made up of CSLB selected representatives (Evaluation Committee). The CSLB evaluation committee consisted of Tonya Corcoran, Mike Melliza, and David Fogt. The Evaluation Committee evaluated each written proposal and through consensus, arrived at a single score for each of the evaluation criteria.

Registrar Fogt then stated that the second phase (oral interview) of the evaluation process allowed each bidder to provide an oral presentation via teleconference to the Evaluation Committee. The Evaluation Committee evaluated the oral interviews and through consensus, arrived at a single score for each of the evaluation criteria.

Registrar Fogt explained that proposals receiving an overall score of 35 or more from the first phase evaluation and an overall oral interview score of 30 or more from the



second phase evaluation were granted a cost component score based upon the hourly rate identified in their proposal. The cost component score was determined by the DCA BSO. He stated that the overall technical score of the first phase evaluation, the overall interview score of the second phase evaluation, and the cost component score were added together by the DCA BSO to determine an accumulated score for each bidder.

Registrar Fogt stated that once all three (3) phases were completed, a Notice of Intent to Award the contract to UC Berkeley was publicly posted in and around mid-November 2020 allowing the four unsuccessful bidders to protest the awarding of the contract to UC Berkeley.

Registrar Fogt explained that no protests were received by the Department of General Services from the four unsuccessful bidders. However, he did note that prior to the contract being executed with UC Berkeley, CSLB did receive a written objection directly from the California Solar and Storage Association (CALSSA) on or about December 1, 2020. However, CALSSA was not a bidder and protests to awarded contracts must be filed with DGS.

Registrar Fogt stated that CALSSA's objection in their letter was that UC Berkeley had an alleged bias towards the IBEW and organized labor. Registrar Fogt explained that he and DCA BSO reviewed CALSSA's objection and the determination was that the evidence presented by CALSSA did not support disqualifying UC Berkeley. CALSSA was notified of that determination via a December 14, 2020, letter from Registrar Fogt.

Registrar Fogt then stated that the consulting contract with UC Berkeley was executed by the Department of General Services on December 31, 2020, and he reminded listeners that the performance of UC Berkeley's consulting contract concludes with their presentation to the Board today. Registrar Fogt then returned the discussion to Board Member Beltran.

Board Member Beltran then provided the board information on what to expect after the study authors give their presentation. He stated that he would first ask for board member comments, which would include the opportunity for any board member to make a motion should they wish to do so. This would be followed by any additional board member comment as well as any public comments which will be limited to 3 minutes. Board Member Beltran then stated that after all comments are heard, if a motion has been made, he will call for a vote. He noted that neither the Board nor the consultants will respond to direct questions from members of the public.

Board Member Beltran then invited Dr. Carol Zabin with UC Berkeley, and her team, consisting of Betony Jones, and Donald Holmstrom to present their study to the Board.

At 25 minutes 53 seconds into the video recording, UC Berkeley was introduced, and UC Berkeley began its presentation at 27 minutes 55 seconds into the video recording. The UC Berkeley presentation ended at one hour, 19 minutes and 15 seconds into the video recording.



a) **Review, Discussion, and Possible Action on the Study and Recommendations**

Board Member Beltran thanked UC Berkeley for their presentation and at 1 hour, 19 minutes and 34 seconds into the video recording, Board Member Beltran invited Board Member comments.

Board Member Comments:

Board Member Nancy Springer explained that this is a very important subject with two groups that have really good points on both sides of this issue over the years. She stated that the C-10 Electrical Contractor license came about 74 years ago, and improvements have been made including the certified electrician program about 12 years ago. She stated that the C-46 license in contrast is 40 years old and no improvements in terms of training or [inaudible] have been made to it. She stated that this is significant because with the technological advancements made in areas like photovoltaics and other areas, it is important for the board to consider consumer protection, in making sure installations are properly made and people have the proper training, which involves much more than taking an examination and renewing your license. She identified that the two codes involved with this topic, the Fire Code and Electric Code, have special requirements, which includes the requirement that qualified people provide the installations. The codes' definition of qualified person speaks to one who has skills and knowledge related to that construction or operation of the equipment and installation, and that they have received safety training. She stated that this should be kept in mind during these discussions, that BESS are a different system with their own sections in the codes, that they are not photovoltaic systems, and that in terms of consumer protection, qualified people have to be installing them.

Board Member Johnny Simpson stated that he supports option two in the agenda packet. He said that the current general policy to allow C-46 contractors to install BESS should not have been issued and should be rescinded. He continued by asking, that in light of UC Berkeley's study, and the findings therein included those listed under option two in the agenda packet, whether a motion could be accepted, to which Board Member Beltran explained that a motion is always in order. Board Member Giarratano provided a "second" at that time.

At one hour, 23 minutes and 58 seconds into the video, Board Member Simpson provided the following motion.

MOTION: To rescind all prior staff classification determinations that C-46 contractors may install battery energy storage systems as these determinations may be applied to new projects.

This includes rescinding the May 14, 2019, CSLB letter to the California Storage and Solar Association that set forth a general policy that C-46 contractors can install a BESS as part of a solar PV installation project.



For the purpose of this motion, new projects shall be defined as any project contracted for work after the publication of an industry bulletin announcing this action.

This motion does not affect the authorization of A and B contractors or C-10 contractors to install battery energy storage systems.

Johnny Simpson moved. Don Giarratano seconded.

Board Member Comment

At one hour, 25 minute and 45 second, Board Member Beltran invited additional Board Member comment.

Board Member Frank Altamura asked direct questions to the UC Berkeley team if there is any reason to believe the C-46 population was underrepresented in the two studies that were used (by the UC Berkeley team in preparing their report). Dr. Zabin answered, "No."

Board Member Altamura then asked, if many of the safety concerns around the batteries, such as thermal runaway and the like, would be mitigated by only allowing C-46 contractors to install battery systems that had certain safety features in place that were packaged units and not assembled cells. Dr. Zabin explained that their safety expert Donald Holmstrom, was not present on the call that day but he carefully reviewed all the possibilities and did not speculate about whether future technologies could mitigate safety risks, but that the current profile of what is getting installed and what dominates the market by far shows significant safety risk and his analysis was based on that.

Board Member Kevin Albanese mentioned that he was really concerned that the Board was going down a road of changing guidance based upon who is doing the work. Board Member Albanese confirmed that CSLB is a consumer protection board, but that CSLB regulates contractors, not the workers or the market. He stated that legislature created the certified electrician program and did not include BESS in that legislation. He mentioned that CSLB's C-46 contractor regulation allows the C-46 to install what is necessary as part of the system, and that BESS has been interpreted as part of the system previously and that now we may go back on that based upon who is doing the work and based upon the Berkeley Report. Board Member Albanese stated a concern with doing so is that he has not seen a single issue of injury or harm presented by a licensed C46 contractor or because they were not installing as a certified electrician. He provided an example of the "B" general building contractor as a license classification that authorizes that contractor, within the multiple trade requirement, to build a residential stick-built home as well as 60-story steel-framed office building, and that the Board licensure process is not designed to inquire into the fine lines of the different details between those works. He explained that in the absence of evidence of harm by C-46s in their current work, it is concerning that the Board would go back and change what they [C-46] can do, which may be setting the Board up for potential litigation.



Board Member Mary Teichert expressed support for Board Member Albanese's comment and emphasized the importance of acting in a manner that allows for public comment. She expressed support for the people who have been working on this issue for years and noted that the UC Berkeley study has only been publicly available for a short period of time. Board Member Teichert noted that since very specific expertise is being sought on this topic, she expressed support for more time to consider, review and comment. She emphasized that there is a lot of information in the study which, while competently done, places a lot of reliance on areas where there is no data. She stated that this emphasizes the importance of proceeding deliberately with regard to this study, which raises a number of issues. Board Member Teichert recommended deferring this decision to allow the public additional time to comment and review the study.

Board Member Simpson stated that he takes exception to Board Member Albanese and Board Member Teichert's statements. He stated that both the C-10 and C-46 contractors have had ample opportunity to make their industry complaints and arguments to the relevant parties over the last four years and that, as a result, it is time to conclude the matter and vote today.

Board Member David De La Torre asked for clarity on the motion, particularly that it precludes a C-46 from installing the BESS but inquired whether they would be precluded from doing so if a C46 had an employee who was a certified electrician?

Board Member Simpson stated that if they hold the C-10 and C-46 they can do the installation.

At one hour, 35 seconds into the video, Board Member Beltran invited Registrar Fogt to comment. Registrar Fogt summarized staff's understanding of Board Member Simpson's initial motion, as follows:

- Accept UC Berkeley's recommendation that would preclude C-46 classification from installing Battery Energy Solar Systems.
- Rescind all prior administrative correspondence or opinions that a BESS could be installed at the same time as solar system.
- Proposing a 90-day grace period to implement this change, to provide time to educate the industry with industry bulletins and to help contractors obtain the C-10 classification if necessary.
- This motion would not impact the ability of the A, B or C-10 classifications to install the BESS within their classification.

Board Member Comment

Board Member Beltran inquired of Board Member Simpson whether the summary accurately reflects his motion, and Board Member Simpson confirmed that it does.

Board Member Michael Mark stated that he appreciated the thoroughness of the UC Berkeley Report, and emphasized the significance of the finding that there would not be



a cost to consumers by the report's recommendation. He further emphasized prior board member comments about technological advancements in the industry. He highlighted that C-10 appear to be doing the majority of work, and that many C-46s have a C-10, limiting the impact of this decision. Board Member Mark stated that the report is thorough and that given the number of years the issue has been discussed, he would recommend a vote on the topic today.

Board Member Jim Ruane emphasized the Board's consumer protection purpose. He noted that the report is very thorough and that the data supports concluding that C-46 contractors be excluded from installing BESS. He stated that the technology may evolve in the future but that for now this is a consumer protection issue, and he supports the motion.

Board Legal Counsel Jason Hurtado made a comment on the motion. He stated that if the Board ultimately restricts the C-46 from installing BESS as recommended by the UC Berkeley Report, then the most legally sound option that carries the least risk for the Board would be to clearly change the regulation and go through the APA process. Because the Board has interpreted the C-46 may install BESS when paired with the PV system, to minimize litigation risk consideration should be given to go through the APA process.

Board Member Diana Love supported the motion under option 2. She additionally stated she had concerns about legislation as it relates to this issue, but that counsel just addressed them. She also stated that one death or injury is too many, and an explosion can occur at any time. Technology is evolving and the Board needs to protect consumers. Board Member Love then asked whether the legislation (or rulemaking) should occur before contractors begin to comply with any new requirement made today.

Registrar David Fogt stated the Board must decide whether they wanted to make the decision today or pursue regulatory rulemaking which could take 18 months. He noted that if the Board were to make the decision today that the C-46 could not install the BESS, CSLB staff would wait 90 days before enforcing that change. Thereafter, if a contractor contracted out of classification, or if a C-10 installed a BESS without a certified electrician, CSLB could take an administrative action against that contractor, which could then be appealed, and ultimately wind up in a Superior Court or Appellate Court with judicial opinion that decides this. Registrar Fogt stated that, as such, that there are different tracks to consider. He emphasized that otherwise the Board could pursue regulatory rulemaking. Registrar Fogt noted that according to reports made today, 90 percent of the contractors doing this work are C-10s and that CSLB staff will help contractors who do not hold a C-10 license to add the classification to their license. The question was if the Board wants to restrict the C-46 classification from installing BESS, what avenue do they find appropriate?

Board Member Nancy Springer asked for a friendly amendment to the motion to consider the option two in the executive summary (of the UC Berkeley Report) on page 5 (*which is to permit the C-46 Solar classification to install BESS on specified residential*



units with identified restrictions). She stated that there are indeed some systems that are “plug and play” that are very minor that could fall into the categories described in option two of the UC Berkeley executive summary, and that this could be a reason to support an amendment to the motion.

Board Member Beltran stated that the remainder of the Board Member comments will be taken, after which Board Member Simpson can state whether he would like to amend his motion.

Board Member Rodney Cobos stated that he is in favor of Johnny’s original motion. He stated that a better trained work force equates to better public safety and consumer protection.

Board Member Johnny Simpson stated he will stay with his original motion. On the topic of regulatory rulemaking, Board Member Simpson stated that it is not necessary. He noted that the original determinations about this topic was not made through the regulatory process and as such can be rescinded by the Board as applied to any new projects. Board Member Simpsons stated that if a regulatory change was needed to rescind current policy, then a regulatory change would have been needed to make that policy in the first place. He noted that the Board is not making any change to the C-46 licensee classification definition, which does not include BESS as it is a solar license.

Board Member Beltran then invited public comment on this topic at 1 hour 45 minutes and 30 seconds into the video. Board Member Beltran indicated there were 131 queued public commenters (with moderator Shelly Jones indicating over 60 direct requests for comments). Board Member Beltran noted that all commenters will have three minutes with a one-minute remaining warning before the commenter will be cut off.

Public Comment:

At 1 hour, 48 minutes and 29 seconds into the video, public comment began. The Board heard public comment from over 60 people on the topic of the proper classification to install energy storage systems, until approximately hour 5, 12 minutes and zero seconds into the video.

At that time, Board Member Beltran called for Board Members to indicate their presence on the call. Roll call was taken, and a quorum was confirmed at 5 hours, 14 minutes and 30 seconds into the video.

At 5 hours, 14 minutes and 50 seconds into the video, Board Member Beltran asked for a roll call on the motion.

Motion Vote



YEA: Susan Granzella, Augie Beltran, Rodney Cobos, David De La Torre, Miguel Galarza, Don Giarratano, Diana Love, Michael Mark, James Ruane, Johnny Simpson, Nancy Springer

NAY: Kevin Albanese, Frank Altamura, Mary Teichert

D. ADJOURNMENT

Board Chair Susan Granzella adjourned the meeting at approximately 2:15 p.m.

Signature on file

Susan Granzella, Chair

Date

Signature on file

David Fogt, Registrar

Date