

DOCKETED

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2022 Field Verification and Diagnostic Testing

Additional submitted attachment is included below.

Lost Coast Energy

1427 West Ave.
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Docket Number: 22-BSTD-03

Title: 2022 Field Verification and Diagnostic Testing OIR Proceeding

Lost Coast Energy is a HERS Rating company located in Eureka, CA. With two active employee HERS raters, we provide a number of energy services, including energy modeling, Whole House HERS Rating, Field Verification and Diagnostic Testing (FV&DT), and Acceptance Testing. We thank the California Energy Commission (CEC) for the opportunity to engage on this serious topic of trust and quality in the verification of Title 24.

Located in Humboldt County, the challenges of working in a rural, remote, and nontypical building environment mean that the services provided by Lost Coast Energy must extend beyond simple Field Verification and Diagnostic Testing (FV&DT) in order to match the needs of local builders, contractors, and homeowners. We must educate, train, and assist builders in the process of complying with the Energy Code prior to any FV&DT. We view this role as vital, not only to our business, but to advance the goals of our state and community and is an added benefit of the HERS and FV&DT program. Maintaining this benefit of HERS Raters is essential while addressing the challenges and cases of fraud in this industry.

The HERS Rater program has the potential to act as a catalyst for better buildings and emissions reductions and we hope that the Commission will take a pragmatic and collaborative approach while making necessary changes in this docket. With recognition of this goal, Lost Coast Energy welcomes the changes to the process of Quality Assurance and Training. While this quality assurance will improve the service that Raters provide to the industry, many of the other proposed changes outlined in the Draft Staff Report may limit competitiveness of small businesses, increase industry costs, and discourage compliance with Title 24.

Welcomes changes to Quality Assurance and Training

Generally, we welcome a more thorough and complete approach to quality assurance and a more robust training regime. Many, if not all of the issues of fraud and conflict of interest discussed in this docket would or could be best addressed by a system of more rigorous training and a closer monitoring of raters. We hope that

the CEC will take an instructive rather than punitive approach to ensure proper testing and verification with the Energy Code..

All the proposed quality assurance measures, including the onsite, shadowing, in-lab, and desk audits would improve FV&DT technician competence and reliability. The shadow audit and in-lab audit especially would be beneficial in instructing raters on proper testing protocols, building science concepts, and consumer engagement strategies. Additionally, the desk audit and increased data oversight from providers would be a useful tool for quick checks of compliance in the most obvious cases of fraud.

One component of additional quality assurance to be considered is the equitable cost share to companies located in rural areas or far from FV&DT providers. Any additional QA costs that are the burden of a rater company would ultimately be passed on to consumers and rater companies will need transparency in any QA costs in order to be accurately reflected in our pricing.

Changes to the conflict of interest provisions may limit competitiveness of small businesses, increase builder costs, and discourage compliance with Title 24.

We understand the credibility of the HERS Program need to define rater companies in order to hold entities accountable as well as individual raters and that the avoidance of a conflict of interest is important for the credibility of the entire industry. However, we believe that the proposed changes to conflict of interest will limit the competitiveness of small businesses, increase costs for most stakeholders, and discourage compliance with Title 24, while only providing a small administrative hurdle for bad actors.

Specifically, we want to raise questions with two of the proposed rules that restrict raters from completing specific activities outside of FV&DT and that set limits on which parties that the rater company can charge for FV&DT services. We believe that these provisions will not effectively address the potential for conflict of interest and instead drive more projects away from complying with Title 24.

Limiting the Competitiveness of Small Companies:

Disallowing individuals, while allowing rater companies to perform additional tasks like pulling permits and completing compliance and installation forms would penalize small rater companies with one or few raters who do not have the resources or staff to offer other services. In small markets, rater companies are

often composed of a single rater that must offer a suite of services to ensure compliance and profitability. In these markets, a business model built solely on the income from FV&DT is not viable without substantially increasing costs due to the limited number of projects permitted. The proposed changes enable the largest companies (who anecdotally are blamed for many of the most egregious cases of fraud), while limiting the ability of small businesses to bring emerging markets into compliance with Title 24.

Increasing Costs and Complexity while Decreasing Compliance

The current installation system, which allows raters to complete installation forms under a designation of signature authority from builders and installing contractors, substantially reduces the burden on builders and installing contractors that may already be resistant to compliance with Title 24. The complexity and time commitment of installation tests and paperwork is prohibitive for many contractors, some of whom exclude themselves in contracts from their completion or avoid permitting projects entirely. Disallowing raters from completing these forms would decrease the likelihood of compliance with Title 24, decrease the efficiency of the building industry, and potentially increase costs for builders.

The change to limit the parties with whom a rater company can engage in financial transactions will also increase costs and add additional burden to raters, consumers, and contractors. The logistical challenges and costs for rater companies and homeowners to coordinate payment will not be exorbitant, but will add complication to an already complex process. More importantly, we believe that removing the important linkage between the installation company and HERS Rater will decrease the quality of installations and the likelihood of compliance.

We find that one of our most important roles as raters is to train builders and contractors in best practices and to assist in the overall compliance process. For example, when testing for duct leakage we regularly conduct tests directly in tandem with installers who then are onsite to make any necessary changes or repairs. This method drastically decreases the burden on the customer in time and additional costs for failed tests. Coordination is key to ensuring that compliance is cost effective, as many change out jobs are attempting to best deal with existing systems and home conditions. By developing relationships with contractors, the rater can train them in best practices and to anticipate compliance issues rather than having to respond to them after a failed test.

For example, we regularly find furnaces installed using wooden building cavities as plenums, a common practice in older homes in our area. Had we acting solely as

FV&DT technicians without an ongoing relationship with the contract, these systems would repeatedly fail and require costly, after-the-fact repairs, but thanks to our working relationships, we have been able to preemptively train them to recognize this issue and address it in their initial bid. The installing contractor is able to provide a better, more efficient installation that meets code and the customer is not burdened by additional visits and costs.

We believe that increasing the complexity of compliance by limiting the services offered by rater companies and severing the relationships between rater companies and installing contractors will ultimately decrease compliance with the energy code. As a company, we believe that the compliance process ought to be as efficient as possible while still resulting in cost effective, low-emission buildings and energy systems. Our work as raters is to make the easy choice for builders the choice to comply with Title 24. The proposed regulations add complexity and cost, only adding more incentive to work outside of permitted jobs.

Changes do not Limit Actual Conflicts of Interest:

In the end, the proposed changes would do little to limit the conflict of interests in this industry without oversight and enforcement. Contractors and builders entering into financial relationships for other services with rater companies isn't any less of a conflict than contracting with individual raters. The financial motive to pass failing projects in order to maintain financial relationships would still exist with the company, as those individual raters constitute and rely upon the rater companies. This loophole would be a plausible shield for true conflicts and would not substantially change current practices or encourage better installation and compliance. Additionally, many of the proposed regulations are unenforceable without substantial financial audit.

Proposed Alternatives

1. Expand Quality Assurance but make Limited Change to Conflict of Interest:

We believe that many, if not all issues, including fraud and collusion discussed under the conflict of interest provisions would be best addressed under the changes to the HERS Provider quality assurance programs. Additional Quality Assurance could be designed to specifically deal with cases that have potential conflicts of interest, an automatic audit when there is a potential for misreporting or fraud. For example, there could be increased oversight required when a rater authors installation documents and signs under a designation of signature authority or when they complete more than a certain number of projects with a single contractor or builder.

We believe that the HERS Providers are best positioned to increase the level of trust in the industry through their tools of training and oversight, not the Commission with additional, potentially unenforceable regulations. We hope that the CEC will consider if the proposed enhancements to the quality assurance process are sufficient enough to address cases of fraud without the need for new regulations and prohibitions on rater and rater company activity.

2. Limit the removal of Raters from a project

We have experienced cases where builders or homeowners remove Lost Coast Energy as their hired HERS rater because we do not provide the results that they want. This “rater-shopping” practice is anecdotally common in the industry and a limitation of the structure of the FV&DT program with raters acting as independent contractors subject to market incentives. Given this arrangement, even with all the proposed changes, there will still remain the economic pressure to pass a project so as to not be removed from a contract.

To address this issue without removing the incentive (see #4), we propose adding limitations to when and how a builder or installing contractor can remove an assigned HERS Rater. This process would require builders to work in good faith with HERS Raters or be subject to increased oversight.

3. Expand HERS Raters Role to Enforce Installation and Verification Measures

While not a comprehensive alternative for all of the issues discussed in this docket, the CEC could empower HERS raters to enforce not only FV&DT measures, but also to enforce all elements of Title 24. This would increase the responsibility of HERS Raters to ensure that builders follow the designs indicated in the compliance document. Having a HERS Rater effectively sign as responsible for all installation measures, indicating that the equipment and assemblies are as specified on the CF1R, would add significant and verifiable responsibility to the role, meaning that the consequence for fraud would be greater. While eliminating the ineffective installation form, this process would streamline the process of compliance by encouraging HERS Raters to stand as the authority regarding Title 24 compliance while not adding any significant conflicts of interest.

4. Incorporate HERS Raters into local Authorities Having Jurisdiction (AHJs)

Understanding the economic incentives of independent, third-party raters are fundamental to understanding these issues of conflict of interest. One

solution would be to remove these economic incentives entirely by incorporating Raters into local Authorities Having Jurisdiction (AHJs). This process, while destroying a CEC created industry of HERS Raters, would give local jurisdictions more control over the standards enforced in their area and contractors more consistency in enforcement. A process for hiring raters into local building departments would smooth the transition.

Suggested Naming Convention:

Change FV&DT to "Title 24 Verification Program" - Currently the HERS program and its many components are colloquially known as "Title 24." Builders referring to the CF1R Compliance Document will call it their "Title 24" and Raters will describe their role as "enforcing Title 24." We suggest describing the entire program by its three stages:

1. "Title 24 Compliance" - the CF1R
2. "Title 24 Installation" - the CF2R
3. "Title 24 Verification" - the CF3R, FV&DT program

This will align with current colloquial language and clarify the various roles and responsibilities within the program. Alas, no fun acronym.

Additionally, while changes to the naming convention may have some impact on company branding and communications, these changes could be minimized as many companies would still provide Whole House HERS services. In name only, these changes would in no way require a change in the activities of companies.

We thank the California Energy Commission for the productive and challenging conversations on this topic. We recognize the gravity of addressing cases of fraud and the general lack of trust in the existing HERS program and hope to continue to work with CEC to address these concerns.

We would welcome an ongoing conversation and are happy to provide additional information as requested!

Sincerely,

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