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Arcxis Comments and Concerns Staff Report #2 (6_19_23)

Additional submitted attachment is included below.



Formerly DPIS Builder Services, Ei Companies, Post-Tension Solutions,
Ensign Building Solutions Home Energy Division & Building Energy

June 19, 2023

David Hochschild, Chair
California Energy Commission (CEC)
715 P Street
Sacramento, California 95814

RE: Comments and Concerns: Staff Report #2 – Title 24 HERS Program
Docket Number 22-BSTD-03

Dear Chair Hochschild:

We appreciated the opportunity to participate in the June 9th workshop and as requested we are providing our comments and continued concerns with proposed new Title 24 regulations for the HERS Program. We agree with Commissioner McAllister's well articulated interest in developing regulations that are *usable and effective*. Utilizing this framework and weighing all staff recommendations against these criteria for both individual consumers and builders, we'd like to offer suggestions for your consideration.

Support for Key Proposals: First, we want to highlight the items we support as they will help us all meet our common goals of consumer protection and increasing energy efficiency in service of the State's climate goals under the HERS Program and importantly we do not believe these recommendations increase consumer burden.

- Deleting the proposal to restrict the number of documents or inspections that can be completed by a Rater.
- Encouraging the use of time/date stamps and geolocation on inspection photos.

- Allowing Raters to pull permits.
- Relocating Field Verification and Testing to the Energy Code, Title 24.
- Rater company provisions: At least one principal of a rating company be an active certified Rater, revising the definition of Rater companies and setting minimum qualifications for Raters.
- We agree with staff comments regarding sampling. Our experience is that sampling has limited value and does not work for existing homes.

During the June 9th workshop, we shared our comments with Commissioner McAllister, the CEC staff, and other participants. Our comments are rooted in ensuring the success of the HERS program and keeping it accessible and affordable. In our view, every recommendation that limits or slows the ability for the work to be done or raises the cost should only be adopted if it addresses a *significant, known, and quantified* problem supported by *current, valid* data.

Structural Issues With the Proposed Regulations:

Data: We urge the Commission to reject regulations *that are not tied to well-defined problems supported by relevant data and research*. We run the risk of adversely impacting program participation by addressing issues the data does not support. The staff report cites data from over 40 years ago as a rationale for the significant regulatory changes before the Commission. We have repeatedly requested that the staff share the *current data, research, and complaints* which we know are essential to crafting regulations that are usable and effective.

We firmly believe these regulations should rely upon data. As such, we support staff recommendations to make data accessible to further improve the program. Data audits should be part of oversight and quality assurance provisions, from all levels, CEC, Provider, Rater, and Rating Company. However we recommend first better understanding the cost implications to Providers related to increased data requirements as these will invariably impact consumer cost.

New vs. Existing Home Inspections. The inspection processes for existing and new homes are fundamentally different and should be addressed separately in the final regulations. We have repeatedly noted these differences for the staff and have offered several times to facilitate site visits to demonstrate these differences. ARXCIS is unique as a Rating Company in that we do both and therefore could be helpful in demonstrating the differences that need to inform these regulations. We are ready to assist in this matter and likely there are others that can contribute as well.

Front-End Program Integrity vs. Impeding Field Work. Any regulatory proposals that do not happen on the job site fundamentally have less impact on the consumer experience. Addressing things on the front-end ensures better consumer usability and efficiency for Raters. Things such as training and quality assurance can have associated costs but don't slow down the actual

inspection process. We support high quality training but we do worry new training requirements by Providers will increase our costs and consequently, consumer costs. We like the idea of hands-on-training, challenge exams, and triennial updates—but we need to better understand the cost benefit impact to Providers and in turn Raters and consumers.

Concerns of Specific Recommendations:

Quality Assurance. First and foremost, we believe that the Title 24 regulations should focus on quality assurance and training so that we are addressing issues at the front-end and will result in less consumer complaints. But limiting to only focusing on consumer complaints is a lagging indicator of problems. ARXCIS is committed to doing the best job possible for our customers. This includes providing training to installers to ensure they are aware of how we rate homes and potential issues they can address.

We do need to be careful, however, that new QA mandates do not interfere and impact construction practices and timelines. For example, delaying new construction for a QA inspection or asking a home owner for yet another visit to their home during working hours are bad ideas as they will prolong the inspection process and in turn lower program compliance.

Rater of Record. The recommendation on Rater of Record needs to be revised and extended to include a Rating Company. While we support the effort to prevent Rating shopping, preventing a Rating Company from being able to most efficiently assign and schedule its staff will increase program costs. During the workshop, staff seemingly indicated this would include a rating company assigning work—but that is not reflected in the draft regulations. We would request that the Commission work with HERS Providers and Raters to clarify the parameters and associated required Quality Assurance to ensure the intent of this provision is executed.

Discipline. To ensure program integrity we agree with Rater discipline. However, we want to ensure we can maintain our autonomy as a Rater company to discipline employees that are unethical. We do that now and do not want our ability to expeditiously address these issues constrained. In addition, any regulations in this regard need to take into account California and Federal Fair Employment Standards and Requirements.

The provisions regarding Provider and Rater Company discipline need clarification. As currently written, the Disciplinary processes would appear to give Providers and Commission Staff complete authority with no clear due process to suspend a private business, essentially putting it out of business. These processes need further clarification to ensure equal protection and due process.

Consent of homeowner. The staff report recommends we get and submit a separate consent form signed by the homeowner *before* we schedule an inspection. We do not see the need nor the cost benefit in adding another step in this process for homeowners. We estimate that our

average HERS inspection cost will increase by 20% with this new proposed requirement. Furthermore, we anticipate this will drop the already low (10-15%) compliance rate for Existing Homes in two ways: One, the additional requirement is likely to cause homeowners to opt out; and Two, the likely more significant point, is the lack of Homeowner compliance in signing and returning the consent form will leave us unable to perform the inspection.

If the intent is to find a way to inform homeowners about the HERS program, we would instead suggest the development of a Homeowner Bill of Rights developed by Providers, Rating Companies, and the Commission. A Homeowner Bill of Rights could be shared with the homeowners by Raters at the start of the inspection, or perhaps by the contractor at the time of install. This approach is efficient, more direct, and does not: result in increasing the number of appointments for consumers, slow down and/or reduce the number of inspections completed, or increase costs for everyone. We currently provide final reports to homeowners, so providing a Homeowner Bill of Rights at the front-end would be a familiar step in the process, minimizing operational challenges whilst keeping costs low.

View-Only Access to Documents. Efficiency is a key aspect of providing quality service at reasonable rates for consumers. At ARXCIS, we have developed a system that uses lower cost office resources to complete paperwork submitted by the Raters so that they can do their work in the field. **Only** Raters can input data and our office staff complete the administrative aspects of this process. The CEC staff proposal will pull Raters away from doing field testing and result in less completed inspections and higher cost as the number of inspections per Rater drops. Based on the limited understanding of the “risks” that the CEC staff is trying to address here, we again suggest that a better approach is adopting a file Quality Assurance process similar to RESNET to ensure data integrity rather than restricting access to documents.

Cost Data. We are concerned and confused about the request for cost data. During the workshop, CEC staff seemed to suggest that they need our cost data to complete their work. They noted we could send this information to the staff with a request for confidentiality as it was only for their internal use. These comments are inconsistent with the report and draft regulations. The staff report and regulations specifically ask for us to disclose our cost publicly.

We do not support publicly sharing proprietary information. The costs associated with our work is subject to many factors including, but limited to, region, complexity of job, new versus existing homes, and in some areas, available workforce. Our costs also reflect the investment we are making in our people including initial and ongoing training, salaries, and benefits as well as recognition of outstanding service. Further we do not believe that current cost data is valid for your process. Whatever we provide now will not reflect all the new requirements and costs that will result under the currently proposed Title 24 regulations. It will be some time before we all have a clear picture of these new costs and should not make any calculations or estimates using current data since we all know they will change.

Sharing proprietary cost data could also create unintended consequences. For example, if we wanted to provide the proposed “verified rater” with a higher salary or better benefits--our

public-facing costs might appear higher and thus, discourage consumers from utilizing our services. Our company invests in our people for higher quality results– a common goal we all share. We do not want to be penalized for being good corporate citizens and supporting California workers and their families. Publicly available cost data–could lead to people manipulating the market where raters offer limited-term low cost services only to drive out their competition and raise prices later.

Limiting the ability of Raters to assist in HVAC systems design. Our role and responsibilities are to help the State meet its energy goals. We inspect homes to determine whether they meet standards and report accordingly–it is under this charge that we object to limiting our ability to assist in improving systems and thus oppose the recommendation that suggests a conflict of interest between Raters and Designers.

Working together at the front-end is more efficient for all parties involved, including the home builder/owner. Systems that are built with specific knowledge of energy efficiency requirements improve the quality of the final product, eliminate unnecessary repetition of site visits, and will get better energy efficiency results for the homeowner and the State. We **do not** specify parts or equipment but our deep knowledge saves time and money by ensuring the systems meet the State’s energy efficiency standards. We believe that aligning design and inspection works to the favor of the homeowner by ensuring that the system works as designed and reduces risk of a failed inspection. Rater designing also isolates issues to equipment which are then easily covered under warranty. Our experience in California and other markets is that builders receive less comfort calls, i.e., less dissatisfied homeowners, through this collaborative approach. The overall quality of energy code enforcement begins at the design phase. Based on our experience, one of the most significant impediments to effective compliance with energy code is when the designer and Rater are not aligned.

We would suggest that the Commission work with Energy Consultants and Raters, such as ourselves, to determine when an actual conflict of interest might occur and not create a blanket regulation that would impede the construction industry, reduce compliance, and increase costs.

Conflicted Data. The proposal on conflicted data and the suggestion to purge work product from the registries is a concern. As described we believe that this proposal creates an abundance of liability and uncertainty for the Raters, Rating Companies, and Providers that will need to be addressed.

Consider Interim Regulations. Overall, it would be prudent to address *fewer* provisions and propose *fewer* program changes in this rulemaking so as to avoid any unintended consequences. As you can see in our comments–there is complexity in this program which requires more discussion and analysis. Once the restructuring into Title-24 is completed, the Commission can adopt further guidance in future code cycles. For example, the Commission has proposed a 72-hour window for registering documents. It would make more sense for the Commission to collect information on the registration timelines from a variety of companies and Raters over the

2022 code cycle before adopting a regulation that sets a bright-line-rule. The Commission should avoid all bright-line-rules unless supported by information and evidence of necessity.

As the largest rating company in the state which completes over 60,000 inspections each year, we have expertise and experience with both existing and new home inspections which can contribute to a better outcome. We all want more energy efficiency and satisfied homeowners and hence the inspections that can drive these results. Final regulations should reflect our common interest to increase the number of inspections and greater program efficiency. At this juncture, we are concerned that without further consultation and collaboration with the industry, and more current data and research (including staff site visits) we may not create a final product that is usable and effective, using Commissioner McAllister's comments at the workshop last week. We need more workshops as well as more opportunities to work with your staff to ensure that what we do today will make the HERS program better. We urge you and others to consider our comments and offers to assist, and take the time necessary to do this well.

We stand ready to assist and look forward to continuing and fruitful discussions on these matters.

Sincerely,

DocuSigned by:

Jonathan Risch

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Jonathan Risch

Chief Executive Officer

cc: Commissioner J. Andrew McAllister, Ph.D.
Lorraine White, Branch Manager, Standards Compliance Branch, Efficiency Division
Brian Early, Advisor to Commissioner McAllister, Ph.D.
Joe Loyer, Senior Mechanical Engineer
Mike Sokol, Director, Efficiency Division