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*Comment Received From: CABEC Advocacy Committee*  
*Submitted On: 6/21/2023*  
*Docket Number: 22-BSTD-03*

## **Comments on Revised Draft Report and Proposed Regulations**

California Energy Commission  
RE: Support for necessary functionality CBECC  
To Whom It May Concern:

The CABEC Advocacy Committee would like to offer comment on the proposed changes to the Field Verification & Diagnostic Testing (FV&DT). The Advocacy committee is a subset of CABEC members that exists to advocate on behalf of the Energy Consulting and HERS Rating industry. While we don't speak for all CABEC members, among our committee members represented in this comment are energy consultants and HERS Raters.

--Separate FV&DT from Whole House Energy Rating and put FV&DT into title 24 part 6 instead of Title 20

CABEC Advocacy supports the Commission on this change if it makes present and future policymaking easier. It occurs to us that this would allow for updates as a part of the Triennial code cycle which, we hope, will allow for more frequent updates to the HERS program.

--Rater Paid by Contractor: homeowner consent

We like the sound of this approach and believe it is a good compromise that allows for appropriate flexibility, while retaining accountability in the field. It is not a perfect system as it will cause tedious delays on some projects and itself be a barrier that motivates circumvention. The upside of motivating more inclusion in homeowners we believe counterbalances this concern. However, we will not be surprised if this element is updated at the next code cycle based on learnings upon implementation.

--Progressive Disciplinary Policy changes

In general, these are welcome changes that are a long time coming. The vast majority of HERS Raters work in good faith to the procedures and the code, and are also mission-driven to deliver high-performance efficient buildings. We recognize that the presence (or perceived presence) of "cheaters" can significantly sap esprit de corps among the Rater community, and so it necessary to have progressive disciplinary policies which give teeth to HERS Providers to work with underperforming raters and their companies.

The application of these policies will necessarily take some effort to coordinate with HERS Providers, and learn and evolve the disciplinary program to be both meaningful and sustainable. We encourage the Commission to approach the implementation of these policies with this mindset.

--Rater Shopping policies

We welcome this proposal's intent to reduce incentives to shop raters until one will

issue a fraudulent “pass” on a demonstrably failing system or project. However, we wonder if the framing of this particular policy might be exploitable by bad-faith raters who can hold projects hostage in exchange for (economic) rents. We expect that this would be a rare occurrence, and could be resolved by the HERS Provider. But if these cases occur, there is likely to be conflicting parties and the HERS Provider will be charged with adjudicating. Is there a formal process for this? Are the HERS Providers properly resourced for this unspecified judicial process? While this may partly address one problem, it may introduce a number of others that the Commission and Providers will have to collaborate to solve.

--Detailed Training requirements and changes to quality assurance procedures  
We support these policies and urge the ongoing partnership between CEC and HERS Providers to evolve policy in support of a robust HERS industry. We will emphasize elements that were mentioned in the Staff Report as particular items of interest for us:

#### 1. Improvements of Rater Quality Assurance procedures

While fulfilling a random and/or occasional QA audit may seem like a tedious, or even punitive process, it’s an essential one for the HERS industry. And we would support our HERS Rater members to accept the process in faith that good work will be seen as such, and deficiencies should be embraced as opportunities for improvement and education. Building Performance is, like any art/science, a discipline with nearly infinite depth, and masters in this field should have ample opportunity to do well by doing good. It is apparent in the docket that the details of a practical and implementable QA program is still under negotiation with the HERS Providers. Since it is the HERS Providers themselves who are implementing the QA program, their perspectives are essential in a successful roll-out. We encourage the Commission to continue to work with the HERS Providers to resolve these issues before passing these regulations.

#### 2. Reinforcement of Provider QA consistency

We acknowledge the observance that there has historically been inconsistency between Providers’ QA programs, and encourage policies and other mechanisms to support this consistency.

#### 3. Detailed training requirement updates

Building science and diagnostic testing is a complex task within a larger complex endeavor. We support bolstering of training requirements on a more regular basis to match the Triennial code cycle. We have personally seen in our practices the inconsistency of some applications of HERS verifications due to a lack of training of HERS Raters on changes to the Standards and JA procedures between code cycles, and this is a problem. We also believe that initial training should be implemented to be comprehensive, but not serve as a barrier to entry.

#### Conflict of Interest changes

We believe it is generally true that a good QA program is sufficient to enforce quality standards among Raters regardless of relationship between rater and contractors. We

don't believe that the Commission has made a clear case why these conflict of interest provisions are warranted. Is there an exceptionally high correlation of fraud associated with specific Rater/Contractor/Owner relationships? Anecdotal is not dispositive here. Among our committee, we have a variety of opinions on these specific policies, but lurking behind these opinions are visions for how the FV&DT industry should work (but isn't yet).

We mention this diversity of opinion to really say that depending on what the ideal structure of industry one would like to achieve, these conflict-of-interest policies may be neither necessary nor sufficient and might confuse the real issues. Also, there are significant downsides to these conflict of interest policies in handicapping HERS Raters as educational resources for the building industry. Perhaps these downsides are worthwhile, but it is nevertheless important to evaluate them when considering these policies.

#### Special Inspector designation

We've noted the proposal to remove the language that HERS Raters and should be considered as Special Inspectors. In our experience, this is a solution without a real problem, as no building department in our collective experience has questioned this. If the Commission finds this change to be compulsory in a legal sense, then perhaps we can recommend that HERS Raters be considered "like" Special Inspectors, but for the Energy Code. For all intents and purposes, they are Special Inspectors, and it's helpful and expeditious that Building Departments understand that role. So long as we can informally call them Special Inspectors, then you do what you think is necessary.

As a side note on this topic, we can imagine in a world where building officials did manage HERS Raters as Special Inspectors, how some of the issues surrounding Quality Assurance and fraud might be mitigated. We continue to support the engagement of building officials in this conversation, and have noted that in these proceedings, their voices have been largely, if not entirely absent.

#### CABEC Advocacy recommends a more flexible regulatory framework for HERS Provider

There are a number of specific policy requirements that are designed to address specific problems that seem more "experimental". There may be significant perverse incentives, negative outcomes, or otherwise unintended (and currently unacknowledged) consequences with these same regulations. This is universal to any policy-making, and the reason we acknowledge this here is ultimately to urge the Commission to consider how accelerate the timeliness of this necessarily iterative process. We note that it has taken 10 years to get to this point.

One example of this is the 72-hour limit for registration. In the case where this policy proves ineffective at addressing the underlying issue, what recourse does the Commission have with "fixing" this policy? We speculate that this may be one advantage with moving the HERS program to Title 24, as updates can be made over the course of the Triennial code cycle. But we also wonder with some of these elements if a faster feedback process would be indicated. Unlike most other codes at the BSC, the Commission has not thus far indicated any interest in updating codes with any more

frequency than 3 years.

Another issue that could use some evolution is understanding the process by which the Commission would define some of the vague requirements in the proposed regulation. An example of this is the requirement for data validation into the Registry. This policy requires that HERS Providers implement vague data validation measures to prevent fraudulent data entry. This could be a relatively easy data check to make sure repeated numbers aren't allowed (though there might be some false positives). Or it could be a completely unwieldy AI-powered behemoth that attempts to assess a documentation author's mens rea for fraud. We don't believe that Staff contemplates the latter, as it would impose substantial costs on HERS Providers, but the policy itself doesn't preclude that.

If the intent is to collaborate on a policy with the HERS Providers, then we would support this in theory, but would note that perusal of the docket log for correspondence between CEC and Providers does not evince comity and partnership. If the relationships are less than protoganistic, then we wonder if a more formal process is indicated to adjudicate contentious issues. If not, then we believe policy "restraint" is a better philosophy here.

This concludes our comments.

Thank you for your time and consideration.  
CABEC Advocacy Committee