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Docket Number: 22-BSTD-03*

**ARCXIS Comments and Concerns 22-BSTD-03**

*Additional submitted attachment is included below.*



August 15, 2023

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

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

Dear Chair Hochschild:

We have continuing concerns about the ability of the State to achieve its aggressive climate goals if the proposed Title 24 regulations are adopted. To achieve the State’s climate goals, we need greater consumer participation in the HERS Program—not less. However, as written, the proposed regulations will dramatically raise consumer cost, reduce access, create significant uncertainty, and thereby diminish participation. While we appreciate and share many of the objectives underlying the proposed Title 24 regulations, we believe there is much more work to be done from establishing clear, shared first principles, through determining the exact nature of the improved regulations. In our opinion, this will require a multi-phased approach to any program changes allowing us to adopt more quickly some of the clear improvements already identified while working across and with the industry to develop improved regulations which will accomplish the State’s objectives.

We respectfully ask the California Energy Commission (CEC) to *adopt regulations only for common training, quality assurance programs, and the definition of a rating company and defer other issues pending more data, research, and analysis.*

All stakeholders are aligned in strengthening the HERS Program and do not want the new Title 24 regulations to create disincentives for homeowners to participate in the program. With an estimated 14 million existing homes in California **an estimated one million HVAC systems need to be replaced each year.** ARCXIS, the largest rating company operating in California, completes 50,000 existing home inspections a year and the next two largest companies we believe complete another 50,000 for a total of 100,000 existing home inspections in the State. As a result, for **HVAC changeouts, we estimate that we are currently only doing 150,000 inspections, or less than 15% of the market today.** This means 800,000 to 850,000 (80-85%) HVAC jobs are being completed without permit or inspection each year with complete disregard for the State’s climate regulations and objectives. Put another way, **80-85% of HVAC**

**system changes are NOT being inspected under the HERS Program today.** Whatever regulations are adopted, they should make the program more consumer-friendly and less costly than what exists currently.

### **Operational Issues**

We have participated in several meetings with CEC staff to discuss the impact of the draft recommendations. We also hosted the CEC staff on August 10<sup>th</sup> for field visits to witness inspections at both new and existing home sites which we believe proved helpful. The regulations as drafted are not rooted in operational practice—they remain largely theoretical. We have repeatedly raised concerns about the inherent issues between new and existing homes—which are not distinguished in the proposed regulations, though the regulations do broadly apply to HERS raters which work in both segments. As your staff witnessed—new home inspections can be in remote locations with spotty Wi-Fi necessitating a different system for generating reports. We have been told distinguishing between new and existing home inspections is out of the scope for these regulations. Changing the regulations for HERS Raters without distinguishing and understanding the consequences in both segments implicitly makes this of concern. We find the lack of understanding to include this foundational issue in the scope of the regulations troubling.

### **Lack of Transparency**

We also used the opportunity to again request access to the data they are using to support the proposed regulations. We understand there are about 100 program complaints a year. With an estimated 200,000 HERS inspections conducted in California annually in New and Existing homes (it was not made clear to us if the 100 complaints were one segment or the other) this equates to 0.05% of consumers engaged in the program. Staff noted privacy concerns, which we understand, but the data should be quantified and somehow shared. This could be done in an anonymous fashion. To ensure veracity in this rule making process—the public and the industry should understand how many complaints and their nature in relation to each proposed regulation. Withholding the data raises serious concerns about the credibility of the work. It also makes it challenging for the industry to identify how and where to improve, whether on its own or in collaboration with the development of new regulations. Without the data it is impossible to judge the impact of each proposed change and if the increased consumer cost is justified by the data. Additionally, while staff have been willing to meet with us, we are unsure of which rating companies and raters they spoke with prior to development of the draft regulations. It is essential that the gamut of the industry is engaged—one person raters, mid-sized companies, and large companies.

### **Cost**

The draft staff report does not include a robust cost analysis. Consumer cost directly correlates to program participation. The draft rules collectively will increase costs with limited information about the direct benefit to consumers and if the costs are even justified. The draft report notes, “However, the new proposed regulations will affect raters in terms of the progressive discipline, appeal process, new requirements for rater companies, quality assurance procedures, training requirements, conflict of interest prohibitions, and compliance

document registration limits. While these changes represent an update to the procedures and oversight a rater will be subject to, the change in cost should be minimal.” No evidence is presented for why the staff feels the impact to be minimal and no data on the cost of current compliance has been requested. As we consider the proposed changes, we **do not** estimate the cost impacts to us directly or those born by raters and rating companies and eventually by consumers by these changes to providers will be minimal. A multi-phased approach will ensure incremental changes to consumer costs that can be weighed against consumer value.

While we believe that this process should be undertaken in a multi-phased approach, the staff has surfaced some key issues that should and can be addressed now that will improve the program and lay the groundwork for further improvement. Specifically:

### **Defining a Rating Company**

As the proposed regulations have identified the current definitions for participants in the industry are limited and not reflective of the development of the FV&DT business over the years. In order to drive down cost, Rating Companies have formed to bring scale, operating consistency, and efficiency to this process. These companies can provide consistent service, statewide, at lower costs. However, the regulations are still written to reflect a Rater as an individual, operating as an independent entity. We believe that there should be a definition of a rating company with minimum standards and qualifications to hold that title. For example, we previously have suggested that rating companies should have liability insurance standards which would ensure rating companies are well established entities and consumers are protected.

### **Quality Assurance and Training**

We do believe that improved quality assurance and training standards should be adopted. Our hope is that these standards will provide better data to address future regulatory adoptions. Providers and in turn raters and rating companies should be held to the same standard. However, we believe these should be outcome-focused rather than process directive. Allow us and other Rating Companies to innovate in the delivery of improved quality and training to find the lowest cost means of delivering the desired objectives. It is not in our business interest to provide poor quality work to our consumers—everyone in the industry should be held to the same standards.

### **Existing Program Improvements**

We believe staff could also review existing program requirements to surface areas in the current program that are duplicative, ineffective and increase consumer costs. Rather than creating new requirements—staff should first comprehensively review our current process. For example, from our perspective the CF2R is duplicative with limited consumer value. We believe these types of issues should be reviewed and discussed with stakeholders with the aim to ensure everything we do benefits the consumer.

We hope you will consider our recommendation to focus on these core issues. We want a successful HERS Program and ways to get more inspections done. Let's take this first step and then take time to consider further refinement in the next cycle, as necessary.

Should you proceed, we have attached our continuing concerns.

Sincerely,

DocuSigned by:  
*Jonathan Risch*  
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Jonathan Risch, ARCXIS

Cc: Bryan Early

ATTACHMENT

## ATTACHMENT

We strongly advise the Commission to focus on establishing training, quality assurance, and the definition of a rating company. For clarity, we are providing additional comments on other areas of the regulation that concern us.

**New vs Existing Homes:** The inspection of new and existing homes is different and should be considered separately. We have raised the issue for over four months now and were just recently told that this issue was “out of scope” and could not be addressed now but could be revisited in three years. Based on the current approach to this rule making, the final regulations will apply to both with little consideration of the differences of these segments and resulting unintended consequences. Therefore, the regulations need to recognize the differences today and not three years from now if we want to inspect more homes.

**Homeowner and Rater Interactions:** We appreciate the movement in the latest revised staff report that moved away from direct collection of payment from the homeowner. We have found in existing home inspections connecting and scheduling with homeowners to be difficult. We average 8 contacts with homeowners to schedule our services. We still believe that rather than obtaining homeowner consent which could further delay this process—we provide homeowners with a “homeowner bill of rights” on the program when we test their home.

**Limiting Report Access:** Draft regulations that restrict access to reports to only the rater conducting the inspection will reduce efficiency. We proposed that both the raters and their rating companies have access to reports. Rater companies divide work between the field and office to increase efficiency and ensure that raters are focused on their field work vs. paperwork. In new home construction, we often do not have access to Wi-Fi and having a centralized function to produce reports ensures timely reports are delivered to customers.

**72-Hour Submittal of Reports:** CEC staff proposed this deadline without seeking input from all of us in the field. The timeline seems arbitrary and infeasible. We recommend changing the timeline to 10 working/business days which is reasonable based upon our experience.

**Limiting Design-Build:** Expanding the list of parties that providers and raters must be independent from to include designers can weaken quality assurance and lead to customers having inferior systems. HERS raters do not do any construction work but do have expertise that can make a home more energy efficient by sharing how to make a home more efficient on the front end. There is no benefit to precluding us from sharing our insight and expertise with builders and contractors. The suggestion that sharing our knowledge at the front end of a project is a conflict of interest makes no sense as we have no financial interest. Furthermore, given the liability for non-performance of a design that a designer has, there is more incentive to make sure that it was installed correctly. Another reason why the preferred model should be to combine design and inspection not separate it.

**Public Release of Employee Data:** We agree with more transparency, but we worry about the privacy of our employees and would like to better understand the benefit of, and use of, this data.

**Conflicted Data:** It is recommended in the staff report that records identified might be inaccurate or conflicted. We disagree and want to maintain records associated with completed work even if initially there are suspected errors. Data should not be deleted until it is in fact confirmed to be inaccurate or conflicted. We also believe the proposed language should be amended to add “knowingly accept” of conflicted data.

**Cost Data:** We have deep concerns with sharing our costs with providers. We pay providers for the services they provide to oversee our work. By sharing cost data—they can back into our profits and potentially increase their prices for their service. This will only result in higher consumer costs.