

DOCKETED

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November 17, 2023

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

RE: **Comments and Concerns:**
FINAL Staff Report November 2023
Title 24 HERS Pre-Rulemaking Express Terms: Docket ([22-BSTD-01](#))

Dear Chair Hochschild:

We have been proactively and productively engaged with CEC staff on the proposed Title 24 HERS regulations since December of 2022. During that time, we have:

- Hosted CEC staff on a site visit and demonstration of field verification and diagnostic testing (August 10, 2023)
- Submitted seven comment letters (December 16, 2022, April 21, 2023, May 19, 2023, June 19, 2023, August 15, 2023, September 14, 2023, and October 18, 2023)
- Participated in workshops and met with CEC staff on three occasions (June 28, 2023, July 20, 2023, and October 23, 2023).

Based on our efforts and conversations with staff we believed that some of our recommendations on the core operational issues would be adopted. As one of the largest rater companies in the State, and the only one working on both new and existing homes, we freely offered our operational knowledge to staff about how this work is conducted in the real world, the costs and other implications of proposed changes, and recommendations for how to develop a more robust program. Because of this due diligence and extensive outreach, we find the final staff report and the proposed changes to the Energy Code very disappointing, and as previously stated, believe if adopted these rules will increase industry and consumer costs

significantly leading to lower adoption of the program and undercutting the State's climate goals.

Continuing Issues of Concern

Conflict of Interest Provisions: We have supported the CEC staff's attempt to better define conflict of interest to ensure that consumers get the best testing. For example, contractors that install a system should not be able to field verify and test their own work. However, the perceived conflict of interest between designers and raters, in particular rater companies where two entirely distinct groups and individuals are performing the work makes no sense and will result in worse consumer outcomes in terms of cost, comfort, and performance. As an integrated provider of these services in new construction to home builders today, we work to create solutions that meet or exceed California code requirements that save builders, and hence consumers, both time and money, while also resulting in better performing homes with higher home buyer satisfaction. Our extensive experience in testing systems coupled with our deep knowledge and experience as mechanical engineers results in designs that meet or exceed program requirements. Seemingly, staff understood and appreciated this, and represented as such to us, but yet now four drafts in the rules still include designers in the provisions regarding restricted financial interests and independence.

As California continues to develop its building and energy codes, the integration of design, testing, and inspection within and across disciplines becomes more critical and more required by builders. Builders need a one-stop shop to help navigate the codes and determine the best means of achieving their construction goals. In addition, many above code programs, for example EnergyStar, have distinct design components that are better executed if coupled with FV&DT services. Segmenting these services increases costs and coordination requirements on builders and creates delays in the construction process. This translates to higher costs of construction and higher housing prices; something we want to combat in a housing market where affordability is at record lows making homeownership a challenge for millions of residents and negatively impacts the state's economy.

It is also to the consumer's advantage to integrate the design and the testing. This allows the designer to ensure that the system was installed and working as per their design. Thus, if there are any issues it can be more quickly pinpointed to one of either faulty equipment or poor design, with any installation issues having been identified and rectified during construction. This creates greater accountability for the designs on the part of the designers and reduces homeowner complaints. This also speeds up complaint resolution. All positive outcomes for the consumer.

Lastly, as registered and licensed professionals the designers have a vested interest in inspecting the installation of their designs and making sure they work as intended so as

to protect their license and livelihood. This is exactly akin to the building codes requiring structural engineers to conduct site observations of their work.

The Commission Staff's perception that there exists a conflict of interest between design and rater reflects a lack of understanding of all the other forces at work and in fact works counter to those forces to create a worse outcome. Designers are fundamentally incentivized to want to inspect the work to ensure the system is working as intended to the benefit of the Homeowner, thereby reducing their risk. Preventing this will increase risk, raise costs, reduce service, and generate more homeowner issues.

Customer Protection and Consumer Education: Given the lack of overt consumer protection today, we have argued consistently that consumer education done the right way can both increase program awareness and participation and educate homeowners should a problem with their testing arise. There are an estimated that of the 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 completed without a 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.**

We discussed with staff providing homeowners with a bill of rights or other educational materials. But rather the draft rules still include the staff recommendation to require homeowner consent before we can begin the inspection appointment. This creates an additional step in our process thereby adding time and cost. Given the already low consumer adoption, this consumer inconvenience will only further erode participation. Less participation will also make it harder for contractors to close out permits. We have seen municipalities not allow contractors with large numbers of outstanding permits to pull new ones. This will have one of two impacts, either contractors will stop accepting new work; or more likely contractors will move to doing work without permits. This proliferation of unauthorized work will also deprive municipalities of much needed permit income.

We would also point out that all FV&DT work is scheduled ahead of time with the builder or homeowner. Homeowners also must provide entry to their home and access to the equipment. This would seem to be a clear indication of consent.

Public List of Raters/Employees: To be a certified rating company the proposed rules require we maintain a publicly available list of our raters. As we have previously stated, our concern with this proposal is that it creates privacy concerns for our raters. In light of the newly proposed disciplinary proceedings, we do not have a concern with raters that have been disciplined being listed publicly. We still fail to understand the consumer

advantage of having all our raters listed publicly. Further given the wide variance in provider capacities we worry this list may not be updated in a timely manner.

Conflicted Data: The conflicted data components in the staff report will result in several operational issues. It is difficult to fully understand the impacts without knowing how the Providers will implement these rules. For example, what are the criteria the Providers will use in determining if data is conflicted and when and how will this be communicated to raters and/or the rating company. Given that the Providers can freeze data they deem conflicted, these are key issues raters must understand to ensure seamless service delivery for consumers.

Cost of Proposed Rules: We continue to have concerns about the collective cost of the proposed rules. For example, while we agree with training standards clearly these new requirements will increase costs which will ultimately be passed along to consumers. We do not believe that the staff's calculations fully reflect the cost impacts both based on that fact that the standards are as yet undetermined and for the simple and immediate reason that the estimation attempt failed to account for recent changes in the minimum wage that will increase wages across the board. They also make incorrect assumptions about the real market costs for various components of the program today and with their prescriptive changes.

Submittal Requirements: The draft language includes a provision that only raters that conduct the testing may sign and submit the Certificate of Verification documentation. To streamline operations and lower consumer costs we have centralized our submittal process. Only our raters can input or edit data, however we utilize administrative staff to submit the documentation to ensure our higher paid raters are conducting testing versus clerical work. Again, the benefit to consumers of this restriction is unclear.

Site Access for Shadow Audits: There is a provision that if an auditor cannot access a site for a shadow audit the rater data is inadmissible to the registry. Raters and rating companies do not have site control. Despite a raters' best efforts, an active construction site might have limited access for safety reasons. In existing homes, the homeowner may not permit the additional access. Rather than be punitive for something outside of the raters' control the rule should address how to remedy the issue with the homeowner or developer.

Provider of Last Resort: There is a proposal to make the CEC the provider of last resort if no other providers are certified. We believe this provision should have a time limit. Given the more robust Provider requirements it remains unknown if the CEC has the staffing or funding to serve as a Provider.

Added and Ill-Defined Provider Requirements: The current system has vast differences in the services offered by Providers, and we remain concerned that with added requirements these differences may deepen given the significant fiscal investment required by Providers. We must ensure that Providers treat all raters and rating companies equally in certification, progressive discipline, conflict of interest and all other matters within their purview. The rules have no provisions to ensure equal treatment of raters.

I again implore you to reduce the scope of this rulemaking. The rules can incorporate some of the issues that had broad-based support, for example, adding further definition to quality assurance, but these proposals need to refrain from making ill and under considered changes that will increase cost, reduce compliance, negatively impact consumer outcomes, and hamper builders efforts to provide more affordable housing to the state.

Please reach out to me with any questions.

Sincerely,

DocuSigned by:

Jonathan Risch

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Jonathan Risch, ARCXIS

Cc: Commission McAllister