

DOCKETED

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Memo on CEC Cease and Desist Letter

Additional submitted attachment is included below.



August 25, 2023

Via CEC Docket 22-HERS-02

Commissioner David Hochschild
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, CA 95814
Chair.Hochschild@energy.ca.gov

Dear Chair Hochschild:

The California Energy Commission (CEC) recently published a [cease-and-desist](#) letter that contained false and misleading information about RESNET Index Scores in California.¹ In publishing that letter, national builders working to promote energy efficient homes and participate in incentive programs have responded with frustration and confusion.² This memorandum is offered to help address some questions.

In the letter, the CEC cited California Public Resources Code, Section 25942 (PRC §25942) as support for prohibiting RESNET Index Scores from being issued to newly constructed homes in California. The PRC §25942 does not apply to the RESNET Index Score or any other national program that allows residential new construction projects to be compared or assessed. The RESNET Index Score is an asset rating and is being used as such. Just like EPA's ENERGY STAR program for residential new construction, the RESNET Program incentivizes builders to invest in building energy efficient homes so that they can easily market those homes.³ Another example of an energy rating program in California, is the DOE Home Energy Score, which is widely used in California. The DOE Home Energy Score specifically "provides homeowners, buyers, and renters directly comparable and credible information about a home's energy use."⁴

¹ RESNET and CalCERTS have responded to the cease-and-desist letter separately, addressing their respective claims independently. Collaboration with the Commission is ongoing. CalCERTS has separate and distinct issues with the false statement in the cease-and-desist letter and is working with the Efficiency Division to get a retraction. See [Docket 22-HERS-02 TN 251907](#).

² In 2019 California Energy Commission Executive Director, Drew Bohan authorized a pilot program to use CBECC-Res for RESNET HERS Indices for new California homes. RESNET and CalCERTS have been working with Commission Staff and industry stakeholders on this pilot since that time. The pilot program is commonly referred to as CA-RESNET. The Commission continues to support the pilot; however, clarifications between the pilot and California's Whole House Program are needed and are at the core of the issues in cease-and-desist letter.

³ https://www.energystar.gov/partner_resources/residential_new/homes_prog_reqs/california

⁴ <https://betterbuildingssolutioncenter.energy.gov/home-energy-score>

The RESNET Index Score is *not* used to substantiate compliance with the California Building Energy Efficiency Standards, or Title-24, or any other compliance related programs. The RESNET Index Score is also *not* used to confirm or issue a California Whole House Score, under Title-20, or 20 CCR 1670. Although the Commission authorized a pilot program in 2019 to use the CEC’s compliance tool to generate RESNET Scores, that pilot is wholly unrelated to compliance. CalCERTS and RESNET have worked closely with Commission Staff and contract programmers on that pilot project since 2019, with *documented updates* to Commission Staff as current as July 21, 2023.

The RESNET Index Score allows California homebuilders and lenders to benefit from incentive programs and to bring those incentives to California. One such program is the Freddie Mac Single-Family Green Bonds Program available to homes with a RESNET Index Score of 60 or below.⁵ Preventing the RESNET Index Score on newly constructed homes in California would preclude builders and lenders from receiving these incentives. This could not be the intent of the CEC, since these incentive programs encourage builders to build better and more energy efficient homes for Californians.⁶

RESNET Index Scores are currently being used by builders as an asset rating in California.⁷ The CEC cannot use PRC §25942 to block RESNET Index Scores because the asset rating does not meet the standards of an “energy rating program” under PRC §25942, or the energy rating program requirements under 20 CCR 1670 (*i.e.* the California Whole House Program).

1. Under PRC §25942(a)(2) and 20 CCR 1672(i), an energy rating program is designed to produce reliable recommendations on cost-effective measures to improve energy efficiency in existing homes. The CEC states that the “California Whole House program is intended not to verify compliance with the Energy Code, but to give homeowners a perspective on the performance of their home.”⁸ More than 97% of energy ratings generated through the California Whole House Program were issued to existing homes. When the program was supported, those assessments were frequently used to help homeowners qualify for energy efficiency mortgages. The PRC §25942 is addressing an energy rating program for existing homes.⁹

This is *not* the RESNET Index Score. The RESNET Index Score is designed to show a comparison in energy use between newly constructed homes, based on the IECC 2006 Standard home. The RESNET Index Score is not applied to existing homes in California. The intent of the RESNET

⁵ Homes with a RESNET Index Score of 60 or less qualify for incentives.

<https://capitalmarkets.freddie.mac.com/mbs/green-sfmb>

⁶ Prohibiting nationally accredited and recognized programs from bringing incentives to California was *not* the intent of PRC §25942 and should not be used by CEC Staff to exclude California from programs that help ratepayers. (See legislative history for PRC §25942.)

⁷ RESNET has reported these scores to the CEC. Under the CA-RESNET Program, the California HERS Index Scores are subject to heightened QAD protocols and requirements.

⁸ [https://www.energy.ca.gov/publications/2022/2022-update-home-energy-rating-system-requirements-california-code-regulations#:~:text=The%20Home%20Energy%20Rating%20System%20\(HERS\)%20regulations%20\(Title%2020,to%20improve%20the%20home%20rating](https://www.energy.ca.gov/publications/2022/2022-update-home-energy-rating-system-requirements-california-code-regulations#:~:text=The%20Home%20Energy%20Rating%20System%20(HERS)%20regulations%20(Title%2020,to%20improve%20the%20home%20rating).

⁹ As the only approved Whole House Rating Provider in California, CalCERTS can share data to support these statements regarding the program.

program is to provide a standardized process of energy use comparison between similar homes. It is geared towards Builders/Real Estate professionals' marketing efforts. This is very similar to other nationally recognized programs being used currently in California such as ENERGY STAR, Net Zero Energy Ready, USGBC and Build it Green.

2. Under PRC §2594299(a)(4) it is clear that the California program is for the purpose of serving *energy users* and the information is to be kept private. "There shall be no public access to information in the data base concerning specific dwellings without the owner's or occupant's permission." This is the opposite of the RESNET Index Score. The RESNET Index score has multiple public uses through the Real Estate MLS and RESNET Registry. While a potential buyer or homeowner may use the score, the score is not intended solely for their use. The RESNET Index Score is intended to be public for the builder's marketing opportunities.¹⁰
3. The Commission does not have a viable energy rating program in California; therefore, it cannot preclude other programs. Under PRC §25942(C) the code reads:

(c) On and after January 1, 1996, no home energy rating services may be performed in this state unless the services have been certified, *if such a certification program is available*, by the commission to be in compliance with the program criteria specified in subdivision (a) and, in addition, are in conformity with any other applicable element of the program. *(emphasis added)*

The CEC has failed to actively support the California Whole House Program, it has refused to update the software which is based on EnergyPro version 5.¹¹ The reporting and program administration mandated in PRC §25942(e) have been completely neglected and/or abandoned. Accordingly, the CEC forfeits its jurisdiction to preclude any other energy rating program until a viable program is available as specified in PRC §25942.

It is important to note, the CEC is working on updating its California Whole House Program. Rulemakings are in the initial stages to rebuild and establish a viable energy rating program.¹² Data from RESNET Index Scores issued in California was provided to the CEC as part of the pilot program. Information gained through continuation of the pilot program will continue to be shared with the CEC's Efficiency Division. At this time, it is unclear whether the CEC will develop an energy rating program that targets both new construction and existing homes. However, information and data from the pilot program has helped address some of the concerns between software and program-platforms commonly used by national builders and differences in modeling protocols unique to California.

¹⁰ The RESNET Index Rating is based on a nationally accredited standard and is used to compare homes on a national market. Excluding California homes from this comparison is counterproductive to the CEC's goals of being a world leader in Building Energy Efficiency Standards. The CEC should want California builders to be able to showcase their investment in energy efficiency measures.

¹¹ The California Whole House program software is no longer generally listed or supported by the software developer. The last known revision was likely in 2016.

¹² <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-HERS-02>

CalCERTS will continue to work with industry partners to support RESNET Index Ratings in California. This work is separate and distinct from CalCERTS' authority to work as a HERS Provider under 20 CCR 1670 *et. seq.*

CalCERTS looks forward to working with the Commission to get a revision or retraction of the cease-and-desist letter docketed on August 23, 2023, and for the Commissioners to provide feedback on these important issues.

Please do not hesitate to contact me directly with any questions or concerns.

Sincerely,



Shelby M. Gatlin, Esq.
Chief Operating Officer

CC:

Drew Bohan, California Energy Commission, Executive Director

Siva Gunda, California Energy Commission, Vice Chair


Andrew McAllister, California Energy Commission, Commissioner


Patty Monahan, California Energy Commission, Commissioner

Noemí Otilia Osuna Gallardo, California Energy Commission, Commissioner


Will Vicent, California Energy Commission, Deputy Director, Efficiency Division

Charlie Bachand, CalCERTS, Inc., Chief Executive Officer

 (916) 985-3400

 www.calcerts.com

 shelby@calcerts.com

 31 Natoma, Suite 120
Folsom, CA 95630

