

<b>DOCKETED</b>	
<b>Docket Number:</b>	23-HERS-02
<b>Project Title:</b>	HERS Home Energy & Labeling Program Updates Pre-Rulemaking
<b>TN #:</b>	252093
<b>Document Title:</b>	CalCERTS Second Set of Comments on CEC Cease and Desist Letter
<b>Description:</b>	N/A
<b>Filer:</b>	Jennifer Brazell
<b>Organization:</b>	CalCERTS, Inc.
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	8/31/2023 2:32:05 PM
<b>Docketed Date:</b>	8/31/2023



August 31, 2023

Via CEC Docket 23-HERS-02

CalCERTS has been working with the Commission to address the [cease-and-desist letter](#) published to Docket 22-HERS-02 on August 23, 2023, and then moved to this Docket.

CalCERTS appreciates the [Statement of Good Standing](#) that was issued to clarify statements in the cease and desist letter, posted to [Docket 22-HERS-01](#) (TN 252038).

CalCERTS also appreciates the Commission posting the [HERS Whole-House Program Advisory](#) to help clarify the confusion caused by the cease-and-desist and to mitigate some of the subsequent harm.

To facilitate the next steps, CalCERTS is providing this redline-response to the cease-and-desist letter to highlight some of the remaining questions and to identify the corrections needed.

We will also docket some information to help correct the record. The video of the April 20, 2022, briefing to the Commission is located here:  
<https://vimeo.com/859410590/90e1ce64c0?share=copy>

We look forward to working with the Commission to provide clear guidance to all involved and to get a corrected record.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelby Gatlin", followed by a horizontal line extending to the right.

Shelby Gatlin, Esq.  
Chief Operating Officer



**CALIFORNIA  
ENERGY COMMISSION**



**CALIFORNIA  
NATURAL  
RESOURCES  
AGENCY**

August 4, 2023 **[Redlines dated 8/31/23]**

Steve Baden  
Executive Director  
RESNET  
P.O. Box 4561  
Oceanside, California 92052

Charlie Bachand  
Chief Executive Officer  
CalCERTS, Inc.  
31 Natoma Street, Suite 120  
Folsom, California 95630

### **RESNET HERS Index Rating use in California**

Dear Steve Baden and Charlie Bachand:

The California Energy Commission (CEC) has recently been made aware that RESNET and CalCERTS, Inc. have been providing false and misleading information to the California building industry, consumers, and other stakeholders. **[CalCERTS has not provided false information. Information published to stakeholders was always first shared with the CEC. These redline comments are provided to help correct the record.]**

Recent communications from RESNET and CalCERTS, Inc. have been publicly stating that the RESNET HERS Index Rating System Program and associated labeling in California has been certified by the CEC. **[The CEC commissioned a pilot. Index Scores have been run through the CalCERTS Registry through a converter applied to CEC software. According to the Building Standards Branch the converter which is on the CBECC-Res software was approved by the Commission when the coding was adopted at a business meeting. Many conversations were had with CEC staff on how to move that converter forward and the limited bandwidth of CEC programmers to facilitate this work. CEC programmers are already overwhelmed with the work related to compliance. Bandwidth for anything further has been nonexistent.]**

In fact, there is no record indicating this program has followed the proper procedural processes provided by California Code. **[There is a record of reporting to the Commission and transparency on behalf of CalCERTS. To say there is no record is false. Several meetings and presentations**

**have been provided. Most notably an update letter on the program dated April 19, 2023. There is no codified process for the CBECC-RES pilot, this was a collaborative effort between the Commission, HERS Providers and RESNET. Please see the CEC letter from Executive Director Drew Bohan to all stakeholders dated 2019.]**

As described in more detail below, operation of such an unapproved system and labeling practice is in violation of California law, and any current practices in violation of the Code must be discontinued immediately. **[CalCERTS did not and has not broken the law. If there are misleading statements published, please bring them to our attention so we can immediately revise or restate them. Hopefully these responses help.]**

Section 25942(c) of the California Public Resources Code provides that it is unlawful to perform home energy rating services in California without CEC certification. In the interest of transparency, the CEC may only approve an entity to perform home energy rating services pursuant to the application and review process established in Title 20, sections 1670 through 1675 of the California Code of Regulations. Pursuant to these regulations, certification of a home energy rating system program requires a vote of the Commission at a duly noticed business meeting. **[In direct response to this cease-and-desist letter, CalCERTS is now working with industry stakeholders to address this assumption as it applies to asset ratings and national incentive programs. The accusations in this letter have required us to work with Builders to provide support. As of the date of this posting, CalCERTS has not supported any RESNET Index Scores outside of the pilot. Now, in direct response to this cease-and-desist letter, we will work with stakeholders to address the CEC's jurisdiction to figure out what marketing programs and incentives are allowed.]**

As of the date of this letter, the CEC has not received a compliant application from RESNET to be certified as a provider lawfully permitted to facilitate home energy rating services pursuant to section 1674, and therefore the CEC could not have certified its program. Therefore, any home energy rating services conducted pursuant to RESNET's HERS Index Rating System Program is in violation of California law. **[CalCERTS has not indicated the pilot was justified through its approval as a Whole House Provider. Rather, CalCERTS used its Whole House Rater Training to create a substantive training to ensure Raters working to issue RESNET Index Scores in California were fully trained on the building performance measures. The Whole House Training was further subsidized with training on RESNET differences. A module was created to specifically train and educate energy modelers, a key aspect of the RESNET process. We also had to address threshold ratings, a key difference in California. This was shared with Commission Staff on numerous occasions and is documented on our website and in the actual training. The training for Field Verification and Diagnostic Testing Raters did not cover all the**

**aspects of building performance needed for a RESNET inspection. This is discussed in the April 2022 presentation. A video recording of that presentation is available.**

**In the April 18, 2023, letter, RESNET asserted it would continue to work with CalCERTS on the program because it believed this substantive training, the building performance aspects of the program, and CalCERTS' investment in the pilot were key to the collaborative efforts and interests of all the parties.**

**Commission Staff were active and engaged in the meeting in April 2022, August 2022, and in response to the April 2023 update and data. This is documented. CEC Staff never followed up with CalCERTS to address or discuss the data provided in July 2023. CEC Staff instead issued the cease-and-desist letter while also failing to address the pilot, these meetings, and the homes that have been registered through the pilot. CalCERTS immediately asked for a meeting with the CEC to discuss all those issues upon receipt of the August 10<sup>th</sup> letter.**

**Importantly, in the discussions with CEC staff and subject matter experts, and in the April 2022 presentation, many questions about how to have a program in California are raised. A copy of that meeting can be viewed here:**

**<https://vimeo.com/859410590/90e1ce64c0?share=copy> ]**

To the extent RESNET is purporting to operate its program under CalCERTS' certification as a HERS provider, please be advised that CalCERTS' certification as a HERS provider does not include RESNET's HERS Index Rating System Program. Accordingly, if this is the case, both RESNET and CalCERTS would be operating in violation of California law. **[If RESNET misconstrued information it should be corrected. At this time, no one from the CEC has provided CalCERTS information on what needs to be corrected or what advertising was misconstrued. We look forward to assisting in any corrections or clarifications as needed. CalCERTS has worked hard to support the Commission's pilot and asked for feedback. CalCERTS has requested and here repeats its request for further information and meetings with the Commission to seek guidance on the intent of this letter, and to correct the record.]**

To operate RESNET's program pursuant to CalCERTS' certification, CalCERTS must submit an application to amend its certification. Please note that RESNET cannot operate pursuant to CalCERTS' certification until after CalCERTS' amendment is approved by the Commission at a duly noticed business meeting. **[This is not the intent of CalCERTS, nor was it the intent of the pilot. Please correct the record.]**

It is my understanding that you may be basing your advertisements on an earlier email from me, in which I expressed interest and support for a RESNET *pilot*

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*program* in California. However, as stated above and as you should be aware, certification of home energy rating services may only be accomplished through a vote of the Commission at a duly noticed business meeting. Any expression of support by me, or anyone else, for your efforts outside of a Commission vote does not constitute approval. **[The Executive Director asked CalCERTS to participate in the pilot. This is documented. Briefings have been provided to CEC staff since the commission of the pilot. This letter conflates two wholly separate programs. The Whole House Program used Energy Pro 5 and targeted existing homes with private information for energy users. The pilot used CBECC-RES for 2019 projects and was programmed by CEC contractors, in conjunction with the CEC, and is exclusively for new construction homes for marketing. The CBECC software according to the programmers was approved by the Commission. In April 2023, a different calculation method was implemented for 2022 projects and shared with the Commission. See update to the Commission dated April 18, 2023.]**

The CEC is happy to work with both of your organizations as you work to certify RESNET's HERS Index Rating System Program in California if you choose to pursue such certification. **[Please correct the record. CalCERTS was asked to work on the pilot because the Commission does not have a viable program. There is no viable software available under 20 CCR 1670 and there has been no program administration. Further, the program adopted under 20 CCR 1670 does not target new construction projects and there is no ESG recognition for that program.]**

Additionally, as I have stated previously, the CEC looks forward to working with you when we initiate our pre-rulemaking to update the California HERS Program focused on whole house ratings as required by California Public Resource Code section 25942 and Title 20. The initial stage of this proceeding is anticipated to begin prior to the end of 2023. In the meantime, any representation, advertising, or marketing of the RESNET HERS Index Rating Program and associated labeling as approved or authorized by the CEC is in violation of these laws. **[The RESNET Index Score is not an energy rating program as defined by 20 CCR 1670, or PRC 25942. There would be no reason or method to apply for approval. Please clarify and correct the record.]**

As a result, the CEC hereby directs RESNET, CalCERTS, and its officers to immediately cease and desist any home energy rating services under RESNET's HERS Index Rating System Program or associated labeling in California on any new or existing residential dwelling. Furthermore, the CEC directs RESNET, CalCERTS, and its officers to immediately cease and desist any advertising of services pursuant to RESNET's HERS Index Rating System Program or of any CEC agreements or approvals purporting to authorize RESNET to operate a RESNET HERS Index Rating Program in California. Please confirm in writing that you have ceased and desisted these activities, including removing and withdrawing any and all false advertisements, no later than August 11. **[The date on this letter is misleading. CalCERTS was given no prior notice of**

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**this cease-and-desist letter. Once received by email on August 10<sup>th</sup>, CalCERTS immediately confirmed receipt of the letter on August 10<sup>th</sup>, and asked for clarification based on the confusing and false statements in this letter. No one responded. Rather this letter was provided to an affiliate with CBIA by Commission Staff. CBIA distributed the notice. It was then that the CEC created this docket. In addition to confusing stakeholders, builders, and raters, this letter even confused Building Departments processing Title-24 compliance documents. (This further proves how confusing it is.) This letter should be amended to correct the record, provide more clarity, and address the issues identified.]**

If you have any questions, please feel free to email me at [drew.bohan@energy.ca.gov](mailto:drew.bohan@energy.ca.gov).

Sincerely,

Drew Bohan  
Executive Director

cc: Commissioner Andrew McAllister