

**DOCKETED**

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November 17, 2023

Via CEC Docket 22-BSTD-01

**RE: CalCERTS Initial Comments on Draft 2025 Energy Code Express Terms – TN 252915**

All of the language in section 10-103.3 is new. It is difficult to provide comments outside of understanding how CEC Staff intend for the program to be implemented. A workshop on this section is needed. CalCERTS requests clarifications on the following sections, so we can provide better and more precise feedback.

**10-103.3(b)1Aii – General Provisions – Conflicts of Interest**

Please clarify if “designer” includes energy consultant.

**10-103.3(b)1Aiv – General Provisions – Conflicts of Interest**

Please clarify what this requires. For example, an attestation under penalty of perjury by Raters and Rater Companies?

**10-103.3(b)1Aviii – General Provisions – Conflicts of Interest**

Provide clarification:

- The language appears to state that when the project is locked to the Rater and Rater Company, that it includes the Provider as well?
- How will this be enforced between Providers?
- Are there any specific requirements for how a Provider registry manages how an address is input?

**10-103.3(d)1Avii(b) – ECC-Provider Responsibilities – Training and testing curriculum**

By allowing more than 1 student per proctor to be present, even when not working in teams, it gives an unfair advantage to some students. Practical lab exams have traditionally been administered between a proctor and a single student. It is unclear why the Commission is proposing to lessen the existing standard. Please clarify.

**10-103.3(d)5B – ECC-Provider Responsibilities – Verified ECC-Rater**

Recommend changing the name of Verified ECC-Rater to Exemplary ECC-Rater or another name that signifies excellence. Verified may confuse stakeholders since verified is a ubiquitous technical term and synonym for inspection.

Clarification request on minimum 5 years experience. Are we to include experience before the new code cycle begins? Do current Raters qualify or is the earliest qualification in 2030-2032?

#### 10-103.3(d)5C – ECC-Provider Responsibilities – Types of Quality Assurance Review

Request an exemption for Raters with 10 or fewer Ratings a year, or when all projects have been contacted without success in scheduling Onsite Audit. Guidance documents could provide clarification for low-volume and remote Raters. It will be important not to discriminate against small operations with low volume that can't accommodate the new mandates.

#### 10-103.3(d)5Ci – ECC-Provider Responsibilities – Types of Quality Assurance Review

CalCERTS thanks the CEC for including our recommendation of Onsite Audits for all Raters. CalCERTS believes Onsite Audits to be the gold standard.

#### 10-103.3(d)5Ci(e) – ECC-Provider Responsibilities – Types of Quality Assurance Review

Request language be changed to:

*Onsite audits shall be performed when an ECC-Provider is investigating a valid complaint from a homeowner about a field verification and diagnostic test.*

#### 10-103.3(d)5Cii – ECC-Provider Responsibilities – Types of Quality Assurance Review

Request clarification on whether these audits are required primarily Raters that operate in sample groups for production housing. Opportunities to schedule a QA on the “day of” with a Rater inspecting a custom home will be extremely rare if at all possible.

#### 10-103.3(d)5Cii(b) – ECC-Provider Responsibilities – Types of Quality Assurance Review

Request clarification. Upon refusal of QA of Onsite Audit of a sample (untested) lot, the language states that the data registry will not accept sample-base compliance documents. Does this mean from that moment forward, specific to that project?

#### 10-103.3(d)5D – ECC-Provider Responsibilities – Remedy for Flawed FVDT

Providers were advised at our meeting on 7/12/2023 with CEC Staff, that this language would be removed. We have sent you a separate statement regarding “Remedy for Flawed Field Verification and Diagnostic Testing. It is not reasonable to expect a certifying entity with no business relationship with the homeowner or builder to “remedy” any flaws in the FVDT. The Rater Company or Rater should be responsible for this and subject to disciplinary requirements if not completed.

#### 10-103.3(d)7 – ECC-Rater Discipline

An ECC-Provider should not be involved in financial transactions between Raters/Rater Companies and homeowner/property owners. It is not reasonable to expect a certifying entity with no business relationship with the homeowner or property owner to act as a collection

agency or enforce financial payments. This must be included so Providers are not constantly pulled into litigation because of actions by other parties. Providers would necessarily need to bring in CEC Staff as well.

As an example, we recommend language be changed accordingly:

#### *10-103.3(d)7Aii – ECC-Rater Discipline – Notice of Violation*

~~The ECC Provider shall hold the~~ Please provide the following clarification: *ECC-Rater shall be responsible for the costs of quality assurance testing and additional training for the violations. The ECC-Rater or ECC-Rater Company shall be responsible for the costs to the property owner for the original field verification and diagnostic test and any necessary retesting because of the violations. ECC-Provider shall not be responsible for any costs related to flawed field verification and diagnostic test.*

#### 10-103.3(d)7 – ECC-Rater Discipline

Request any language regarding ECC-Provider response of 5 days, be changed to 10 days.

#### 10-103.3(d)8 – ECC-Rater Company Discipline

Request any language regarding ECC-Provider response of 5 days, be changed to 10 days.

#### 10-103.3(d)8 – ECC-Rater Company Discipline

An ECC-Provider should not be involved in financial transactions between Rater Companies and homeowner/property owners. It is not reasonable to expect a certifying entity with no business relationship with the homeowner or property owner to act as a collection agency or enforce financial payments. This must be included so Providers are not constantly pulled into litigation because of actions by other parties.

#### 10-103.3(d)8 – ECC-Rater Company Discipline – Suspension & Decertification

Request clarification if Raters working at multiple Rater Companies may continue to conduct FVDT at Rater Company not being disciplined.

Request clarification if Raters working at both disciplined Rater Company and as individual, may continue to conduct FVDT as an individual Rater with no connection to disciplined company.

#### 10-103.3(d)11H – Immediate Reporting of Disciplinary Actions

Should suspensions be included in this reporting requirement? Can a suspended Rater or Rater Company continue to operate at one Provider if suspended from another?

#### 10-103.3(f)2 – ECC-Rater Company Certifications and Responsibilities – Required Conduct

Request clarification or potential error. Historically, a Rater has never been allowed to act as the “Responsible Person”. The purpose of the Certificate of Installation is to place the responsibility

on the installing party. The Rater or Rating company has been able to act as the Document Author, and with signature authority from the installing party, has been able to sign on their behalf. But the responsibility, and ultimate purpose of the “responsible party” has always been with the installer.

The language in this section is redefining and shifting the responsibility of the installation onto the Rater. This is significant, and we believe likely an error.

However section “10-103.3(d)5Ci(c) – ECC-Provider Responsibilities” expands QA requirements to include information on certificates of installation, when the Rater has signed as the responsible party

Request clarification if it is the CEC’s intent to redefine the intent of the certificate of installation.

#### 10-103.3(d)11D – FV&DT Data Reporting

Even though similar regulations were adopted in 2022, CEC Staff have not defined a “Compliance Registration Package” Before new requirements are adopted, terms and requirements should be clarified.

#### 10-103.3(d)12 – Responses to Commission Requests for Data

As worded, this is limitless and should not pass fiscal review by the Department of Finance. For example, CEC should have access to all info for a single dwelling (for e.g. to do an investigation) at any time. But as it is written, the regulations allow an ask for the entire registry. That’s an impossible lift and cost prohibitive. Reasonableness needs to be written into the code language rather than expecting Providers to invest in resources to build platforms that per this code language, accommodate unknown and unspecified requests by Commission staff now and in the future. As worded this section is vague and overbroad and therefore cannot have the required cost assessment. Once we better understand what Commission Staff really want, we can propose more reasonable language. A brief discussion on this issue with the HERS Providers should help get it resolved.

Sincerely,

The CalCERTS Operations Team

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