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on 2025 Energy Code Rulemaking, 24-BSTD-01, 15-Day Language

Additional submitted attachment is included below.



June 28, 2024

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

RE: Comments on 2025 Energy Code Rulemaking, 24-BSTD-01, 15-Day Language

Dear Chair Hochschild:

ARCXIS respectfully submits these comments on the 2025 Building Energy Efficiency Standards, Express terms, 15-Day Language (“15-Day Language”), issued on June 13, 2024. ARCXIS has been actively engaged throughout this rulemaking process, both by submitting comments and meeting with Commission staff in the pre-rulemaking phase on the proposed changes to the Field Verification and Testing Program. The 15-Day Language includes several significant improvements to key portions of the proposed rulemaking language and we appreciate the responsiveness to our prior comments. We specifically support the changes to the definition of a company principal, the ability to utilize a live proctor for challenges exams, more clarity regarding notification to raters on shadow audits that are scheduled, and clearer guidelines around the Commission’s request of data.

In the following sections, ARCXIS provides its recommendations for additional changes to the 15-Day Language.

1. Delegation of Signature Authority for Certificates of Verification

The 15-Day Language clarifies that ECC-Raters or ECC-Rater Companies may sign a Certificate of Installation on behalf of the responsible person if they have complied with the delegation of signature authority requirements set forth in Section 10-103(a)3A.¹ ARCXIS supports this authority, but recommends that the same flexibility be provided for signing Certificates of Verification. ECC-Rater Companies may have centralized document submission processes that are streamlined to reduce costs and reduce

¹ See Section 10-103.3(f)2Di (“An ECC-Rater or ECC-Rater Company may sign the Certificate of Installation as the “Authorized Representative” if they have a Delegation of Signature Authority (Section 10-103(a)3A) agreement with the Responsible Person and in place with ECC-Provider.”).

delays. Allowing the ECC-Raters to delegate signing authority to ECC-Rater Companies would support this streamlining and help to reduce costs. Therefore, ARCXIS recommends that the 15-Day Language be amended to provide ECC-Rater Companies the ability to sign on behalf of individual ECC-Raters to the same extent and subject to same restrictions as is provided for Certificates of Installation.

Proposed Redline of 15-Day Language:

Section 10-103.3(b) General Provisions.

2. Prohibition on False, Inaccurate, or Incomplete Information

A. ECC-Providers shall not knowingly accept, store, or disseminate untrue, inaccurate, or incomplete information or information received through actions not conducted in compliance with these regulations, including information related to field verification and diagnostic testing information, field verification and diagnostic test results, or results on a certificate of compliance or certificate of installation documents.

B. ECC-Providers shall not accept payment or other consideration in exchange for use of their data registry to report a field verification and diagnostic test result that was knowingly conducted and reported out compliance with these regulations.

C. Only the ECC-Rater who performs a field verification and diagnostic test shall have signatory authority for all certificates of verification related to the field verification and diagnostic test.

i. ECC-Raters shall not use technicians that are not certified ECC-Raters to perform field verification and diagnostic testing unless said technicians are directly supervised by the ECC-Rater in person on the project site.

ii. ~~Except as provided in Section 10-103.3(b)2Ciii, no~~ ~~Ne~~ other person shall sign the certificates of verification other than the ECC- Rater that preformed or directly supervised technicians that performed the field verification and diagnostic test.

iii. An ECC-Rater Company may sign the certificate of verification on behalf of the ECC-Rater if they have a written agreement in place:

a. Specifying that the ECC-Rater Company may sign certificates of verification on behalf of the ECC-Rater.

b. That is signed by both the ECC-Rater and a ECC-Rater Company representative.

c. That is retained by the ECC-Provider to which all field verification and diagnostic testing documents are submitted for the building to which the testing pertains.

d. That is maintained in the ECC-Provider Data Registry such that it is accessible for verification by, but not limited to, the Energy Commission and enforcement agencies.

e. That the ECC-Rater Company maintains professional liability insurance sufficient to cover the FV&DT work performed by the ECC-Rater.

2. Consumer Information Template

ARCXIS supports the 15-Day Language change that directs the ECC-Provider to develop the Consumer Information Template, subject to review and input by the Commission. This document will provide consumers with much needed information about the ECC program and the complaint process. ARCXIS encourages both the ECC-Providers and the Commission to seek input from the public and ECC-Raters on the content and form of these templates.

However, the current language regarding the requirements applicable to ECC-Raters and ECC-Rater Companies is still unclear and needs refinement. First, the content of the Consumer Information Template is dictated by the ECC-Provider. However, as currently worded, it appears that it is the ECC-Rater or ECC-Rater Company that must ensure that the Consumer Information Template includes the required information. The 15-Day Language should be modified to clarify that the ECC-Rater or ECC-Rater Company must simply utilize the most current template developed by the ECC-Provider. Second, nowhere in the 15-Day Language is there a requirement for the ECC-Rater or ECC-Rater Company to provide the Consumer Information Template to the owner or owner representative. As that is the essential purpose of this document, that obligation

should be expressly stated. Finally, it is unclear what is meant by “register” in this context, and ARCXIS recommends that the simpler term “submit” be used.

Proposed Redline of 15-Day Language:

Section 10-103.3(b) General Provisions.

1. Conflicts of Interest.

A. Prohibition of Conflicts of Interest.

...

vii. The ECC-Provider shall develop a Consumer Information Form, and the Commission may request to review and provide recommendations on the content of that form. The ~~ECC-Rater or ECC-Rater Company must register a~~ Consumer Information Form ~~with the ECC-Provider, which~~ shall includes educational materials regarding the ECC Program, the roles and responsibilities of ECC- Raters, ECC-Providers and ECC-Rater Companies, and the means by which the owner may file a complaint. The Consumer Information Form must also include the owner’s valid contact information, comprised of the owner's name, project address, phone number, and email. Prior to the start of any field verification or diagnostic testing at a project site, the ECC-Rater or ECC-Rater Company shall provide a copy of the version of the Consumer Information Form that was most recently developed by the ECC-Provider to the owner or owner representative and shall submit a completed Consumer Information Form to the ECC-Provider. Failure to register a valid Consumer Information Form will make the ECC-Rater or ECC-Rater Company subject to discipline as described in Sections 10-103.3(d)7 and 10-103.3(d)8. For projects with no current owner in residence, the owner's contact information may be that of the landlord, developer, builder, or any other such person with a real property interest. ~~The Consumer Information Form shall be developed by the ECC-Provider, and the Commission may request to review and provide recommendations.~~

3. Penalty for Inaccessibility for Providers to Access Homes

Section 10-103.3(d)5Cig of the proposed regulations would subject the ECC-Rater or ECC-Rater Company to penalties if the ECC-Provider is refused access to a development for an onsite audit. The 15-Day Language makes a minor improvement to this provision by clarifying that any potential penalty is at the discretion of the ECC-Provider. However, ECC-Raters and ECC-Rater Companies do not have site control of the buildings that are tested. In new construction settings, that access is solely determined by the developer. For existing buildings, that access is controlled by the building owner. In either case, the ECC-Raters/ECC-Rater Companies should not be subject to penalties for access issues that are completely outside of their control. If there is some form of penalty for a lack of access, it should be directed at an entity with the ability to grant access. ARCXIS recommends deleting this penalty provision.

Proposed Redline of 15-Day Language:

Section 10-103.3(d) ECC-Provider Responsibilities.

5. Quality Assurance.

C. Types of Quality Assurance Review.

i. Onsite Audits

...

~~g. If the ECC-Provider is refused access to the development, the ECC-Rater may be subject to investigation and disciplinary action at the discretion of the ECC-Provider.~~ The ECC-Provider shall document onsite audit results, provided to the ECC-Rater and ECC-Rater Company, provided to the homeowner, and recorded in the ECC-Provider's quality assurance database (Section 10-103.3(d)9B).

4. Quality Assurance Onsite Audits

ARCXIS supports the 15-Day Language modification that changes the sample group for onsite audits to 1 in 100 dwelling units or single family residences. However, we are concerned about a new provision that would require a failed onsite audit of an *untested* unit to be recorded in the ECC-Provider's quality assurance database. We support the inclusion of failed *tested* units in the database, but ECC-Raters and ECC-Rater Companies should not be held accountable for units were never tested. ECC-Raters and ECC-Rater Companies should not be punished for a failure that they had no ability

to impact. ARXIS does support the prompt notification of any failures to developers, ECC-Raters, and ECC-Rater Companies.

Proposed Redline of 15-Day Language:

Section 10-103.3(d) ECC-Provider Responsibilities.

5. Quality Assurance.

C. Types of Quality Assurance Review.

i. Onsite Audits

...

f. Onsite audits shall be performed for every 100 dwelling units or single family residences (or both in combination) in a single development constructed by a single developer that make use of the sample-group provisions (Building Energy Efficiency Standards Reference Appendix RA 2.6). Nothing in this provision shall require that any dwelling unit in any sample-group remain open beyond the requirements in Building Energy Efficiency Standards Reference Appendix RA 2.6. These onsite audits shall comply with the following:

...

(iv). A failed onsite audit of the tested dwelling unit shall constitute a failed onsite audit for the ECC-Rater. A failed onsite audit of ~~either~~ the tested ~~or untested~~ dwelling unit shall be recorded in the ECC-Provider’s quality assurance database (Section 10-103.3(d)9B). A failed onsite audit of either the tested or untested dwelling unit shall be reported to the developer, ECC-Rater, and ECC-Rater Company as soon as is possible. Failed onsite audits of dwelling units within a sample- group shall not be deemed to fail or impact in any way the compliance status of the sample-group.

5. Rater Company List of Employees.

ARCXIS strongly supports the ability of consumers to readily identify individual ECC-Raters that are qualified and certified to work. However, we still fail to understand the rationale for having a publicly available list of all ECC-Rater Company certified raters. It is not clear who would request this information or benefit from its availability. ARCXIS does understand that there is a public interest in identifying which ECC-Raters have been found in violation of the ECC program requirements by the ECC-Provider. To reduce cost and administrative burden, the public list should be limited to any raters that have been found in violation by an ECC-Provider.

Proposed Redline of 15-Day Language:

Section 10-103.3(f) ECC-Rater Company Certification and Responsibilities.

2. Required Conduct.

A. ECC-Rater Companies shall maintain a publicly available list of all of its ECC-Raters for which the ECC-Provider has issued a notice of violation pursuant to Section 10-103.3(d)7, and the ECC-Rater Company shall include all such ECC-Raters on the publicly available list until such time as the period of probation or suspension, as applicable, has ended, or the ECC-Rater has been decertified.

6. Pricing/Cost Information

Section 10-103.3(f)2Fiv of the proposed regulations would require that ECC-Rater Companies provide annual total and average cost of service data to the ECC-Provider. We remain concerned that giving ECC-Providers our cost information could impact the prices they charge us for their services. We rely upon ECC-Providers for our training, data management, and certification. Given this business relationship, it provides an unfair advantage to ECC-Providers to understand our pricing model. ECC-Providers could use this information to inform the prices we must pay them to participate in the ECC program. Lastly, we have no assurances this information can remain confidential. We remain unconvinced that this data helps consumers or improves the ECC program. We are all operating in a market to provide field verification and testing—let the market drive prices. ARCXIS recommends that the Commission delete this provision.

Proposed Redline of 15-Day Language:

Section 10-103.3(f) ECC-Rater Company Certification and Responsibilities.

2. Required Conduct.

F. No later than March 31 of each year, each ECC-Rater Company shall submit to the ECC-Provider an annual report that includes:

...

~~iv. The total and average cost of services charged for each type of field verification and diagnostic test performed by ECC-Raters working for the ECC-Rater Company during the prior calendar year.~~

We want to thank you and staff for meeting with us and receiving our comments. Please reach out to me with any questions.

Sincerely,



Jonathan Risch, ARCXIS

Cc: Commission McAllister