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CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
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Sacramento, California

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Helen,

Thank you for your diligent work at the Energy Commission.

I have reviewed the HERS II program 45-day language for new and existing homes.

The language in Section 1673. Requirements for Providers, (i) Conflicts of Interest (3) is very precise.

“Providers and raters shall be independent entities from any firm or person that performs work on the home for a California Home Energy Audit or a California Whole-Home Energy Rating.” These words specify raters are to not be affiliated with any person or firm performing work on a home for a California Home Energy Audit or a California Whole-Home Energy Rating. The rater and builder doing the work to increase an exiting home’s energy efficiency must be independent from each other. This is the CEC’s policy for new construction builders and subcontractors relationship with HERS Raters providing site Title 24 required measurements. Raters must be independent 3rd party individuals not employed by or affiliated with builders or subcontractors.

Knowing this is the CEC’s position, what is the rational for the HERS II, 45-Day Language, EXCEPTION to Section 1673(i) (3)? Building Performance Contractors have the privilege of performing the construction specified in the California Existing Home Analysis and Audit then provide the California Whole-House Home Energy Rating. I understand this is an Energy Commission special program as part of a provider’s rating system. This exception is specified by the HERS Technical Manual so Building Performance Contractors are allowed to complete the specified energy savings construction and perform the HERS II Rating.

Where in the HERS Technical Manual are Building Performance Contractors allowed to be both builder and rater on an existing or new construction site?

Through my years of experience working on energy code changes and specific workshops with the CEC Commissioners and Staff members, the building community relies on a number of consistent CEC positions. For example in the construction industry we all know the Energy Commission’s passion on two issues. First, builders know the CEC’s standard for residential homes, commercial, retail or professional buildings construction materials and inspections/testing will reduce the site energy use. Second, the CEC’s position for HERS Raters is clear. HERS Raters are to be independent individuals not affiliated in any way with builders and subcontractors to assure energy excellence and avoid conflicts of interest between builder, subcontractor and the rater.

This EXCEPTION to Section 1673(i) (3) allows Building Performance Contractors to be trained by HERS providers, so they complete the specified energy saving work at an existing or at new home sites then perform the required site HERS Rating. This position conflicts with the CEC long held “conflict of interest” HERS rating policy. Now, new home and

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commercial builders have the precedent to use this EXCEPTION to challenge or sue the CEC for the equal right to have their employees trained by HERS Provides. Then, these certified HERS Rating builder employees would provide HERS Rating at the builder's sites. They will argue the CEC negated the HERS Conflict of Interest Policy by the commission's adoption of the EXCEPTION to Section 1673(i) (3). The result, not only will Building Performance Contractors have the exemption to do the building and rating, but new home builders will have their certified HERS Raters do their site HERS Ratings.

What evidence has the Commission used to make this policy change, which will have wide sweeping ramifications?

Thank you for considering my letter. I look forward to hearing from you.

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