

# Memorandum

To: Docket Office

Date : December 10, 2008

Telephone: 651-3007

From : Helen Lam, MS-25  
**California Energy Commission**  
1516 Ninth Street  
Sacramento CA 95814-5512

Subject: **Docket No. 08-HERS-2**

<b>DOCKET</b>	
<b>08-HERS-2</b>	
DATE	<u>DEC 09 2008</u>
RECD.	<u>DEC 09 2008</u>

The attached captured the comment made by Jeff Chapman of the California Living Energy at the Energy Commission's November 20, 2008 Business Meeting, pertaining to the proposed amendments to the California Home Energy Rating System (HERS) Program regulations. Please docket and distribute the attached as part of the HERS Rulemaking records, Docket No. 08-HERS-2.

Thank you for your assistance.

BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                   )  
  )  
Business Meeting                   )  
  )  
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CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

THURSDAY, NOVEMBER 20, 2008

10:00 A.M.

Reported by:  
John Cota  
Contract Number: 150-07-001

1 CHAIRPERSON PFANNENSTIEL: All in favor?

2 (Ayes.)

3 CHAIRPERSON PFANNENSTIEL: Thank you  
4 very much.

5 Item 7 has been moved to the December 3,  
6 I'm sorry, I should have said that at the  
7 beginning, the December 3 Business Meeting.

8 Item 8. This is an informational item  
9 taking no action today regarding proposed adoption  
10 of regulations regarding home energy ratings. The  
11 regulations will not be adopted today; rather,  
12 revised language, 15 day language, will be  
13 released for review and comment by the public  
14 immediately following this hearing. Good morning,  
15 Ms. Lam.

16 MS. LAM: Good morning, Commissioners.  
17 My name is Helen Lam; I am with the Buildings and  
18 Appliances Office. This is an Efficiency  
19 Committee information item and I am here to answer  
20 any administrative or procedural questions that  
21 you may have.

22 CHAIRPERSON PFANNENSTIEL: Thank you.  
23 Now I think that just for the benefit of the other  
24 Commissioners, this is an item that will be taken  
25 up at our meeting subsequent to 15 days from now.

1 MS. LAM: Correct.

2 CHAIRPERSON PFANNENSTIEL: But this is a  
3 notice period. And I don't see, I don't have any  
4 blue cards. I'm sorry, I do have a blue card.  
5 Somebody wanted to speak on this, very good. Jeff  
6 Chapman for California Living Energy.

7 MR. CHAPMAN: Thank you very much,  
8 Commissioners and staff and ladies and gentlemen.  
9 To introduce, I am Jeff Chapman with California  
10 Living Energy. And today I am also speaking for  
11 the nonprofit group, CalHERS.

12 Since the late 1970s the California  
13 Energy Commission has accomplished more in saving  
14 the state of California energy than any other  
15 state agency in this country. I will not bore you  
16 with the data of how our carbon footprint has been  
17 reduced, although we want to reduce it more. How  
18 energy has been saved, the benefits of homeowners  
19 in saving energy and also commercial buildings  
20 saving energy. And also the fact that you have  
21 accomplished your goals.

22 In this process you have stuck to a very  
23 strict policy. You have had a plan that's worked  
24 and you have become the envy of every state in  
25 this nation in terms of energy use and the way

1 energy is managed. And you also have become the  
2 envy of even other countries.

3 My comments today are in the nature of  
4 an inquiry, which is far different from anything  
5 else. So I am simply asking a question. And the  
6 question will focus on one of the ways you have  
7 made sure energy has been saved and builders have  
8 done an excellent job. And that is your  
9 implementation of the third-party system. We know  
10 that system has worked. We also know that you  
11 have listened to many challenges from groups,  
12 special interest groups, from lots of different  
13 sources of input and even from lawyers.

14 You know from your experience that this  
15 independent verification process of implementing  
16 Title 24 calculations vis-...-vis HERS requirements  
17 has indeed been very successful. The independent  
18 verification promotes integrity and minimizes  
19 vested interest groups from doing the kinds of  
20 things they would like to do for their interests.  
21 As most of you are aware the Energy Commission is  
22 now investigating a nationwide corporation for  
23 possible violation of this conflict of interest in  
24 third-party testing.

25 What I would like to inquire about, and

1 simply inquire, is in the language of HERS II in  
2 Section 8.2 there is an option now for indeed  
3 performance contractors to do the work at an  
4 existing residence. To provide either work and/or  
5 additions like windows. Maybe not total work but  
6 windows and other things. And also to be  
7 certified to be their own rater, to do their own  
8 rating. That would seem to fly in the face of  
9 what you have done for so many years to accomplish  
10 in keeping rating a third-party, separate issue.

11 And I guess from my experience in doing  
12 depositions and also from the outside looking into  
13 the legal system, they are always looking for one  
14 thing and it is called precedent. Precedent. And  
15 when they find precedent they come after that  
16 weakness and challenge the system to try to win  
17 their client's case. Not usually based on truth  
18 but on precedent.

19 And from the way the economics are, it  
20 would be much wiser for my clients to take that  
21 precedent of saying, well Energy Commissioners,  
22 you have already allowed the performance  
23 contractors to do their own rating and to certify.  
24 Now I want -- As a nationwide builder I want you  
25 to allow my employees to be trained as HERS raters

1 and they can do the rating for my company. That's  
2 a possibility. Not a threat, a possibility.

3 As an Employee of California Living  
4 Energy we have enjoyed this relationship for  
5 years. I guess we have been through three just  
6 since 2000. I have enjoyed meeting staff members  
7 and the interactions and the acceptance and the  
8 kindness.

9 And as a member of CalHERS I would like  
10 to suggest to you that you uphold the third party  
11 standard and not allow the performance based  
12 contractors to be rated and to do their own  
13 inspections in keeping tune with what you have  
14 always upheld. I thank you so much for your time  
15 and for your interest and getting input from you.  
16 Thank you.

17 CHAIRPERSON PFANNENSTIEL: Thank you,  
18 Mr. Chapman, we appreciate your comments.  
19 Mr. Pennington, did you have a comment? Did you  
20 move up to the --

21 MR. PENNINGTON: I was only here in case  
22 you wanted some response from staff or a reaction.

23 CHAIRPERSON PFANNENSTIEL: Would you  
24 like to make a response?

25 MR. PENNINGTON: Sure. What we have



1 done in these regulations is try to establish a  
2 range of delivery approaches that we can use to  
3 achieve home energy ratings and energy efficiency  
4 improvements in homes. And we have tried to  
5 incorporate the range of delivery mechanisms that  
6 exist in the marketplace now and to allow those to  
7 continue to be used and allow those to expand in  
8 the future.

9           There are two very distinct models for  
10 delivering energy assessments and improvements  
11 that exist in the marketplace today. There's a  
12 model that has an independent third-party that  
13 does the assessment and the recommendations are  
14 passed on and it is open to the homeowner to try  
15 to deliver those if they wish.

16           A second model is an emerging model that  
17 has what is termed a billing performance  
18 contractor who is involved not only in the  
19 assessment but also in the delivery and  
20 implementation of the improvements.

21           Both of those models have their  
22 advantages and disadvantages. The model related  
23 to the building performance contractors delivering  
24 the work and doing the assessments is that there  
25 is a potential conflict of interest where the



1       assessment could cause the improvement  
2       recommendations to be the work that the contractor  
3       is prepared to deliver and disregard other  
4       improvement possibilities.

5               We have been concerned about conflicts  
6       of interest in the past and we have addressed  
7       those and required a separation between the  
8       evaluator of work and the installer of work. We  
9       have done that in the building standards and  
10      that's what Jeff is referring to.

11             In this case we think that the model of  
12      using the building performance contractor has very  
13      strong advantages. We are actually getting work  
14      done and actually accomplishing real things and  
15      motivating the homeowner to act. And that is a  
16      weakness with the model of just making  
17      recommendations and kind of leaving it up to the  
18      homeowner to act.

19             But we recognize that there are  
20      potential conflicts that can arise out of that.  
21      So as a result we have specifically identified  
22      building performance contractors as one possible  
23      delivery mechanism that would be a program that  
24      would be especially approved by the Energy  
25      Commission and that we would expect extra quality

1 assurance to be done on that work.

2 We would expect that the  
3 comprehensiveness of the evaluation would be  
4 assessed through quality assurance. We would  
5 expect that there would be a disclosure of the  
6 contractor that they are in the situation where  
7 they are both the assessment provider and the  
8 installer. And so we have tried to cover for the  
9 potential conflicts that can arise out of that  
10 situation and tried to address them.

11 CHAIRPERSON PFANNENSTIEL: Thank you,  
12 Bill. This will be back in front of us in a  
13 couple of Business Meetings. I guess December 17,  
14 as I see it.

15 MR. PENNINGTON: Correct.

16 CHAIRPERSON PFANNENSTIEL: And we will  
17 go back through it at that time. But thank you  
18 for your comments.

19 MR. PENNINGTON: Sure.

20 CHAIRPERSON PFANNENSTIEL: Moving then  
21 on to Item 9, possible adoption of the Electricity  
22 and Natural Gas Committee's report, An Assessment  
23 of California's Nuclear Power Plants: AB 1632  
24 Committee Report. Assembly Bill 1632 directs the  
25 Energy Commission to adopt this assessment in