

**“Complaint Against and Request for Investigation of CalCERTS, Inc,
Docket No. 12-CAI-01”****CalHERSTORY**

When the California Energy Commission (CEC) adopted the Title 20 HERS Regulations (T20) in 1999, it did 2 things differently than the RESNET Standards Nationally. 1st it prohibited HERS Providers (Providers) from being HERS Raters (Raters). 2nd, it prohibited conflicts of interest between Providers, Raters, Builders, Developers, Contractors, Owners, etc. This was an important & necessary step to ensure program integrity, consumer protection, regulatory compliance, energy savings, etc.

The CEC adopts regulations, standards, and Providers. Providers develop training, quality assurance (QA) & complaint procedures, data registries, and certify Raters. Raters work for owners (and with contractors) acting as special inspectors to the local building department to ensure compliance with the regulations.

The CEC & Providers work extensively with each other on the development, implementation & enforcement of the HERS Regulations. Unfortunately the Rater has largely been left out (excluded) of this process. Yet the Rater is the most important player in making sure the regulations are complied with in the field. The CEC & the Providers have deprived themselves (and the public good) of the benefit of the Raters perspective, experience & knowledge.

The involvement of the HERS Rater through CalHERS the past 4 years has been of great benefit to; The HERS II rulemaking, 3 NSHP guidebook revisions. QII Standards for low density foam, the CHEERS (almost) decertification process, the 2013 Title 24 part 6 Building Energy Standards (T24) process, HERS Regulation enforcement, etc. CalHERS has provided important insight to the CEC that it would not have received otherwise.

And yet the CEC staff instructs Providers to not communicate with Raters.

The past few years have felt like the HERS Rating System has been falling apart. While the HERS Phase II Regulations were adopted in December 2008, and became affective September 2009, no Provider was approved for Whole House Rater (Rating) until July 2010, and Building Performance Contractor (BPC) in September 2011. When CHEERS should have been approved for Rating July / August 2010), it was being pushed to be decertified, which CalHERS prevented. Ultimately CHEERS was required to “deactivate” (stop accepting new projects on the registry, having the same affect on Raters, causing them to loose work, and have to waste time & money to recertify with CalCerts event though they had already passed approved training & testing). Decertification would have had a worse affect on utility rebate programs as well as code compliance. In July 2010 the CEC undermined the HERS Regulations by adopting “Interim rules” (but not by any formal or public vote). And where is CBPCA during all this? They’re AWAL, waging a public disinformation campaign saying that HERS II was being delayed or dead, (for at least 3 years now) which has gone unanswered by the CEC.

CBPCA likes to say that CalCerts has a monopoly, and use that as an excuse to not expand their Provider offerings. But it's their own failure to not do so, and the hope that they will be successful in getting BPI to replace the BPC in the T20 regulations. They are poor sports since they did not get their way during the T20 rulemaking. And cheating in their 3rd Party Quality Control Program has been rampant. The California Public Utilities Commission (CPUC) in 2008 adopted the 2009-2020 Strategic Plan, in which it called for "engaging" the Raters in 2010, and here we are in 2012 and nothing happened. Energy Upgrade California (EUC) has excluded the Raters from the beginning not recognizing the equal benefit of the Rater to the BPC, and is not (and will not for some time) require the contractors to be BPC's. In September 2011 when the CEC approved a BPC Provider they required BPI Certification (analyst & shell) even though CalHERS & CBPCA kept it out of the HERS Regulations in 2008. BPI camping out in Bill Pennington's office most of 2011 sure paid off. No public notice, participation, or comments.

And then there's MASCO. In the summer of 2005 before the 2005 T24 standards went into effect, CHEERS told MASCO Raters in public during the update classes that they would have a conflict of interest since MASCO had bought HVAC & Insulation contractors. CHEERS did not take action against the MASCO Raters, and in July 2008 2 CalHERS Members filed a Complaint with the CEC to investigate. In February 2009 the CEC ruled (and MASCO admitted) that MASCO had a conflict of interest. To date the MASCO Raters were never disciplined, and MASCO got out of the Rating business.

In 2011 a Rater filed a complaint against Valley Duct Testing (VDT) with CalCerts alleging various violations. CalCerts investigated and suspended the Rater for 6 months (which was later reduced to do a report being written on how to use the registry). In September 2011 another Rater filed another complaint against 2ea VDT Raters making many of the same allegations as the 1st complaint. CalCerts Investigated, and found some issues, suspended the 2 Raters (not the same Raters as the 1st suspension). The 2 Raters were decertified a couple of weeks later. 3 other VDT Raters were also investigated and although issues were found they were not suspended or decertified, presumably they are on increased QA.

Now let's throw in incomplete & wrong training, as well as teaching how to cheat. Add incorrect interpretation of the regulations, & not enforcing the regulations. Oh, and did I mention that the HERS Phase II T20 Regulations should have been approved as early as 2001? The HERS / BPC industry has lost the last decade!

I almost forgot EnergyPro, with multiple violations of the ACM, limited capabilities, and instable results, poor reports, problems importing data to the registries.

As for the Rater we absolutely must have good training, mentoring, QA and discipline when all else fails.

The T20 HERS Regulations are fundamentally sound, but the implementation & enforcement of them has been very poor.

What we have is a totally dysfunctional system, with everyone at each others throats when we need to be building the industry.

So how do we get beyond this? The CEC & Providers need recognize that Raters are an equal stakeholder & partner. We need to open up the channels of communication between us. We need to sit down in an informal process to air the issues, talk about what's working, what we need to be doing and chart a path forward.

We have larger & more important issues to deal with like; increasing compliance / enforcement which will provide more work for Rater, more fees for Providers, and achieving our energy efficiency goals.

The Complaint to Investigate CalCerts

Some principles we should apply to the QA & disciplinary process;

Innocent until proven guilty

Right to a jury of your peers

The punishment should equal the crime

The VDT Raters claim that CalCerts overstepped it's authority as a Provider by not providing them with due process.

I view the investigation as not just being against CalCerts, but all Providers & the T20 regulations.

The CEC approves Providers, and the T20 regulations require the Provider to do QA and investigate complaints (a QA process). CalCerts claims that they are independent of the CEC since they are not involved in the education, training, QA, & discipline.

The CEC does not have a direct relationship with Raters and can not discipline, nor reinstate them. The CEC can investigate, and it does direct the Providers what to do, as well as monitor their activities, and review things before they are made public or finalized.

The T20 regulations call for a QA process that notes Rater (or Contractor) failures to be noted in the Registry, increased QA for 12 months, and well as public notice of increase QA, they do not call for suspension or decertification. CalCerts went right to suspension and than decertification. The Raters need to be involved in coming up with a common QA / Complaint / Discipline process as part of T20 that is the same for all Providers.

Rater Agreements are written by the Providers and presented to the Raters to sign, or not. Rater Agreements should be the same for all Providers, and be done in collaboration with Raters and the CEC, and should possibly be part of T20.

QA questions that must be answered to make a decision;

What provider and when, have met their QA requirements? The CEC has allowed the Providers to not meet them.

Have the Providers followed their QA process?

How long have the decertified Raters been Raters?

How much and what Ratings have they done?

How much and when, by whom, and what were the results of QA?

How many Raters have been put on increased QA?

CalCerts QA process

for new Raters

Rater notification before perform 1st job.

QA with the Rater present on 2 jobs within 6 months.

Document review on the 1st 5 jobs.

QA for ongoing Raters

Document review

Site QA with Rater present, observe & independent testing

QA Rate

1 per year minimum

1% of total

Re-Certification if no Rating >1yr

Challenge test

Initial Rater QA required

Complaints

Respond within 24 hrs

Documentation of QA

Put into Rater file, and copy provided to Rater.

As a Rater for 11 years, with 2 different Providers I am unaware of any QA having ever been done on me. Except for recently at the direction of the CEC to prove my claim that I Rated the 1st new single family net zero energy home in California. And that has revealed issues in the QA process to me. I made a few mistakes and was not trained on how to do something correctly, and some of the interpretations of code are just not correct, as well as issues with the software.

Various Raters have expressed concern over the QA process to me that past year. But many Raters fear speaking out due to retaliation. A Rater has been told to fire 2 employees that have had disciplinary action taken, and told that if he didn't his whole company would be considered "suspect". Another Rater was decertified at the direction of the CEC with no investigation by the Provider.

Discipline does not always seem to even. 1 Rater has been suspended temporary while all others have been decertified. How may Raters have been put on increased QA is unclear. 1 person who is not a Rater has been permanently barred from becoming one or using the registry.

The Life of a Rater

Being a Rater is not an easy job. Much of our work comes from those that we are doing verification on. They don't like to fail, and when you fail them they usually accuse you of being incompetent and having done things wrong. It's common for them to get another Rater to come in and pass them. I had this happen to me. I tried to get the Provider to come and QA me to prove to the contractor I did my test right or to fix my error. The Provider took 10 day to respond; no we can't do that, if we did for you we would have do it for everyone. Unfortunately this undermines the Rater and the Rating Industry. Installers won't refer work to you if you're too tough. As special inspectors to the Local Building Department we need to be backed up and be able to document failures. But CalCerts tells us and the registry prevents us from issuing a CF-4R that shows as a failure. I view our job as Raters to have things Pass. I tell people what they need to know upfront, and when it does not pass, I have to help them make it pass. Raters are the best people to deliver education & training to installers. The important thing is that things actually pass.

QA feedback

During training a Provider was talking about QA in broad terms. I said "It would be nice if you let us know what kinds of problems you find". The response was if we told you, you would know how to cheat. The truth is if we knew than we could correct or mistakes before (if ever) we have QA. If we knew that Raters are getting caught doing things wrong, that we too might get caught. The absence of QA has allowed Raters to make mistakes knowingly or not with impunity.

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