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HERS PROVIDER

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California Energy Commission
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To: California Energy Resources Conservation and Development Commission

Re: Order Instituting Information Proceeding
Docket No. 12-HERS-1

From: CalCERTS, Inc., a California Approved HERS Provider ("CalCERTS")

Comments to the Order Instituting Informational Proceeding

Docket No. 12-HERS-1

Introduction

Even though the actual order instituting an inquiry (OII) into Title 20 came as a result of the complaint filed against CalCERTS in 2012, CalCERTS had already had many conversations with various staff at CEC regarding some of the difficulties in Title 20. It has been apparent for several years that the improved technologies, the new markets (such as Alterations/Change Outs) that have been developed, and the stabilization of the general business model currently used in the industry since the 1990's when Title 20 was first written have changed the character of what Title 20 needs to address. Providers have different issues to deal with than were ever conceived of when Title 20 was first written. As one example, the Quality Assurance (QA) requirements have changed in both the amount of QA required, and the reporting and monitoring of QA progress.

These comments seek to bring to the attention of the CEC a helpful discussion of salient points regarding how changes, or the lack thereof, will potentially affect the HERS system for the next several years. Even though Title 20 is primarily about Providers, the regulations must be updated to serve the current needs of Providers, Raters, Installers, Designers, Building Officials

and the Consumer. As the HERS industry is an important link in the statewide effort to meet AB758 energy savings goals, this new rulemaking is very important.

It should also be noted that our comments submitted on January 25, 2013 are not entirely relevant any longer since several of the comments submitted then have been vetted either formally or informally. Therefore, these comments supersede any conflicting comments between the two submittals. The details of some of these comments will need to be worked out in more focused workshops and meetings, but for now, CalCERTS submits the following comments to the California Energy Resources Conservation and Development Commission ("CEC") for consideration in the Informational Proceeding, Docket # 12-HERS-1

Provider QA Programs

The Quality Assurance requirements in Title 20 have a substantial impact on the business models of both Providers and Raters. In order to properly conduct QA, we must:

1. Carefully monitor ratings entered into the Registry and analyze them on a per-Rater, per-measure, per-year basis to determine whether or not QA is required.
2. Maintain a staff of skilled, discrete Quality Assurance Raters available to work across the entire state, and their equipment.
3. Attempt to schedule a QA visit with homeowners or superintendents.
4. Ensure that the QA Rating takes place in a timely manner, using a process that requires much more data collection than the HERS Rater must collect. In addition to FV/DT data, multiple photographs are taken and occupants interviewed, in an attempt to discover in advance any extenuating circumstances that might explain a discrepancy between the original results and the QA results.
5. Enter that information into the Registry.
6. Prepare a disposition for the HERS Rater detailing the results of the QA Rating, pointing out any discrepancies and requesting clarification, and possibly requiring additional QA ('+2' or '2%'). Ongoing communication with the Rater is frequently necessary, especially when additional education might be needed or when there are extenuating circumstances.
7. Finally, if additional reviews are necessary at the '+2' or '2%' level, other Providers must be notified, and the cost of the additional reviews must be covered by the Rater.

Because of the time and staff necessary to meet the Title 20 requirements, QA has a substantial impact on the Providers business model and on their revenue.

For more than five years, CalCERTS, Inc has requested relief from the CEC with regards to the Quality Assurance quotas outlined in Title 20. The listed quotas are not only difficult to fulfill but also fail to take into consideration cost-effectiveness for the Providers and for the Raters. We have a number of suggestions regarding ways to modify the quota, and will be happy to provide supporting data at the CEC's request:

1. CalCERTS, Inc requests that measures which have proven difficult to review receive a reduced quota or an alternate QA Protocol (see below). Specifically, there are aspects of Quality Insulation Installation that are extremely difficult to QA effectively due to the short time span between the Rater's verification and installation of the drywall, which prevents the QA rater from seeing the work the Rater inspected.

2. CalCERTS, Inc requests that CEC consider a reduced quota for Raters who have been certified by a Provider for 1 year or more, or alternately for Raters that were also active during previous code cycles. This is meant to reflect the fact that experienced Raters that have already been subject to QA review should require less oversight and education than brand new Raters.
3. Similar to the above, we also request that CEC consider a reduced quota, per measure, for Raters that have repeatedly passed QA on that measure.
4. CalCERTS, Inc strongly urges the CEC to prepare protocols for Quality Assurance. Specifically, we request that CEC detail, for each measure, the protocols for both field review and determination of "pass/fail" status. For example, if a Rater certified that a particular HVAC system had 5.7% duct leakage with a 6% or less requirement for that system, and the QA Rater finds a 6.8% duct leakage, should the initial Rater be subject to the progressive disciplinary process? Or conversely, if the Rater says a system leaked 5.9%, but QA finds only 3.9%, does the rater fail due to gross mismeasurement, even though the system still passes? This is especially important for measures that are difficult to QA. These measures include QII after the drywall has been hung, and Fan Efficacy on package units.
5. The issue of providing QA results to interested parties is a complicated one. Many homeowners demand the results during the QA rating, but it is arguably unfair to release the results until the initial Rater has had a chance to discuss their results with the Provider. Furthermore there could very easily be legal consequences or litigation based on QA results that would have a serious impact on the Raters, Contractors, and Providers involved. Conversely, as an issue of consumer protection, homeowners and building departments should be made aware when residences are found to be out of compliance with Title 24, especially in cases that might affect homeowner health (Building Envelope, Indoor Air Quality, and Duct Leakage are examples). CalCERTS, Inc requests that if the Energy Commission modifies Title 20 to make such notifications mandatory, they do so with careful consideration of the mechanism for releasing those results and the possible legal consequences for the parties involved.

HERS Rater Disciplinary Process

CalCERTS, Inc suggests the following:

1. The progressive disciplinary process that CalCERTS, Inc applies to Raters is based on Title 20 Section 1673(i). One of the key points of our QA program is that we always give Raters the ability to respond to and appeal the initial determinations, and list extenuating circumstances (for example, recent work done in the attic may explain a disconnected or crushed duct). If there is a significant discrepancy that can't be explained by extenuating circumstances, we suggest possible causes and solutions to our Raters and review the Title 24 requirements with them. If a Rater demonstrates a pattern of significant discrepancies with a particular measure after receiving feedback and review from the QA Director, then that Rater will be subject to '+2' QA Reviews on that measure. This results in a 'red flag' indicating the '+2' status by the Rater's name on the public Rater directory, and the increased QA cost is passed on to the Rater. If additional QA reviews find a continuing pattern of

discrepancies after the fact, then the Rater is elevated to '2%' status, the 'red flag' is maintained, the additional cost is passed on to the Rater, and the CEC is notified.

   a. CalCERTS, Inc requests that the language of Section 1673(i)(3)(C) be changed. Currently it states that the additional '+2' reviews be performed on Ratings already completed within the past 12 months. These are ratings that were performed before the Rater was notified that there was a problem with their results. If the language was changed to apply the '+2' requirement for the next 6 or 12 months instead it prevent Raters from receiving QA and being disciplined for results prior to the warning they received from the Provider.

2. Decertification of a Rater by a Provider needs to be differentiated from deactivation of a Rater. Decertification takes place as the end result of a disciplinary process and has only been applied in cases of ongoing unethical behavior, while deactivation may simply be due to a Rater switching Providers or failing to pay their bills. With that distinction made, CalCERTS, Inc suggests that the CEC be the final arbiter of whether or not a Rater decertified by one Provider should be decertified or barred from other Providers. Although in one sense it may be a business decision among individual Providers whether or not to accept decertified Raters, from a consumer protection standpoint it is difficult to see why a HERS Rater who has been decertified for unethical business practices should be allowed to simply switch Providers and possibly continue with those practices. As an overseeing agency CEC should advise in such cases.
3. Third party Quality Assurance programs are not recommended by CalCERTS, Inc. Although such programs could help alleviate the financial burden that the QA burden poses to Providers and Raters, and litigation concerns faced by the Provider, such a program would also prove very difficult to implement. The need for this type of program has largely been overcome by technology currently employed, or being contemplated in the near future. There is a sufficient body of Raters to handle the foreseeable volume. Hopefully these problems can be alleviated by addressing some of the other concerns listed in these comments without resort to a third party program.

HERS Rater Companies

Rating firms that manage multiple Raters have become an increasingly important component of the HERS Industry, and CalCERTS, Inc suggests that some changes be made to Title 20 to reflect this fact.

1. Since HERS Rater companies may be owned by people unfamiliar with Providers and Data Registries, we suggest that some minimal amount of training be required of company owners. This training would be a brief overview of topics like: Financial Interest and Conflict of Interest Rules, Quality Assurance, and Sampling, and could probably be completed in just one or two hours. A similar process has been adopted nationwide by Energy Star, which requires that at least one agent of builders who sign up for that program to review a brief webinar on the requirements and their responsibilities.

2. Second, corrective action applied to one Rater of a firm should not apply to other Raters in the firm. While it is possible that a Quality Assurance failure represents a company-wide problem rather than a problem with an individual Rater, those issues can be addressed in ways that do not pose a financial burden to the Rating Firm or the Provider.
3. To help with the preceding problem, Rating Firms should be encouraged to maintain their own, internal, QA program. This is already a requirement under RESNET for the rest of the nation, and could prove beneficial in California as well. An internal QA program would allow Rating Firms to address any company-wide problems that might be revealed through QA by the Provider, and would also give Providers a single point of contact for discussion of QA results. If the results of such a program are shared with the Provider it should also result in a lower QA quota for that company.
4. Lastly, if there is a requirement for Providers to maintain a list of active Raters available to the public, then Title 20 should clarify whether or not the 'red flag' that goes by a Rater's name for going to '+2' or '2%' status will also apply to the company.

Conflict of Interest

With regard to the Conflict of Interest issues, there are a number of questions raised about possible activities of Raters, Contractors, and Providers. CalCERTS, Inc feels that those questions should be answered in a revision of Title 20, with consideration given to practices that are already common in the marketplace, and also with consideration given to whether or not those practices are generally beneficial to homeowners and the intent of the HERS Program. For example, while it is possible to construe a Conflict of Interest when a HERS Rater is also the Energy Consultant calling for the HERS measures, this practice is common-place in the industry and tends towards the benefit of the homeowner and the HERS Program. Similarly, many Rating firms are pulling permits, and this can only contribute to increased enforcement, compliance, and statewide energy efficiency. Therefore CalCERTS, Inc recommends that the Conflict of Interest rules be re-written to expressly allow such practices.

However, there are other general problems with the way Conflict of Interest is defined in Title 20 that CalCERTS, Inc would like to see addressed in the OII. The Conflict of Interest Rules should not only define what actions do and do not count as a Conflict, but should also define the responsibilities of the Providers: How does a Provider know when a Conflict of Interest has occurred? What power and authority are they given to investigate such a Conflict? What responsibilities do they have to investigate given the authority they have? Do these rules apply to Raters only, or also to Contractors and Builders? What are the appropriate disciplinary actions when a Conflict is found?

Permissible HERS Provider Certification Categories

Partial Provider-ships exist in the marketplace today, possibly in contravention of Title 20 Section 1673(a)(1). There are multiple benefits to allowing Providers to be only partially certified, primarily due to increased competition in the marketplace, an increased rater workforce, and a HERS industry that is not dependent on only one Provider. However, there are drawbacks – segmenting the marketplace in this way can also have a negative impact on consumers, building departments, and Raters. Homeowners, typically already unclear on what Title 24 is, can become even more confused when presented with multiple different options for HERS Raters, only some of whom may be certified for the work needed. Building departments that are already struggling to enforce the Title 24 requirements may also be confused by a proliferation of Registries and Raters that may not be certified to complete work in their jurisdiction (especially when the building department requires additional measures to be tested). Finally, Raters that enroll for certification with a partial Provider may be unaware that they will be unable to become completely certified with that Provider.

Energy Commission Oversight of Providers

1. Uniform language from the CEC regarding various aspects of Title 20 has been requested above. Specifically we are requesting clarification of various aspects of the Quality Assurance requirements, Rater discipline, and the Conflict of Interest rules. Title 20 already details requirements for training and many other processes, and CalCERTS, Inc has not identified a specific need for new language except in the areas already mentioned. Additionally, we believe the Providers should have the opportunity to provide different, unique and varied training and education to potential and existing HERS Raters. The CEC already approves training and exams. We feel that is sufficient.
2. CalCERTS, Inc recommends that Providers failing to comply with regulations should be subject to a progressive disciplinary process that could include fines, public reprimands, temporary suspension of the Registry or of the training program, and of course rescinding approval of the Provider. However, it is important that this process be clearly outlined in Title 20 in a way that takes into account severity of offenses and frequency of offenses, and with an appeal process that would hopefully avoid a full 1230 hearing. If in addition to a progressive disciplinary process Title 20 mandates that Registries will be programmed to provide greater access to the CEC to review FV/DT and QA results, this may help to prevent the need for formal inquiries and may enable staff to intervene with Providers who are failing to comply with regulations before disciplinary action is required.
3. Per our comments above, CalCERTS, Inc does request that CEC consider ways to reduce the Quality Assurance quota in ways that are fair for both Raters and Providers and that support consumer protection.
4. CalCERTS, Inc requests that CEC not mandate a timeframe for Quality Assurance reviews beyond what is already present in Title 20. For one thing it is unclear from the question how exactly such a requirement might work, but beyond that there cases where it is necessary to be able to perform Quality Assurance even months after the initial rating. These cases include homeowner requests for Quality Assurance, complaint

investigations, and Raters who have a low annual volume of registered certificates. Since a fair QA process involves the right to dispute findings and the responsibility of the Providers to consider extenuating circumstances, even a lengthy delay between the Rating and the QA Rating should still result in a fair and balanced consideration of the results. While there is a concern that too much delay has occurred between the rating and the QA, there are actually no documented incidences where rater discipline occurred without an opportunity to expose changes that occurred during the time period. However, CalCERTS supports QA happening as close to the Rating as possible.

5. Rater information should definitely be made available to the public. For one thing, this allows and encourages consumers to be able to find their own Raters rather than being steered to the contractor's choice of Raters. It would also allow industry stakeholders like the CPUC and the various building departments to review the Raters available for work in certain areas. Furthermore, without a publicly available listing of Raters, there is no way for Providers to be able to notify the public when Raters have been placed on '+2' or '2%' status, which is a consumer protection issue and possibly in contravention of Title 20 Section 1673(i)(3)(C). If CEC determines that publicly available lists will not be mandated in Title 20, CalCERTS, Inc requests a change to the above referenced code to clarify its meaning.

Very Truly Yours,

Michael E. Bachand
President

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