

CALIFORNIA ENERGY COMMISSION

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January 14, 2015

California Energy Commission

DOCKETED**12-HERS-01**

TN # 76177

SEP 25 2015

Brett L. Dickerson
Dickerson Law, Inc.
332 West F Street, Suite A
Oakdale, CA 95361

RE: CONFLICT OF INTEREST IN THE HOME ENERGY RATING SYSTEM (HERS)

Dear Mr. Dickerson:

This letter is in response to your letters dated September 9, 2014, and November 23, 2014, and the meeting on October 22, 2014, with you, David Hegarty of Duct Testers, Inc., and Energy Commission staff and attorneys to discuss your concerns on conflict of interest issues.

Issue #1: HERS Raters Pulling Permits for Building Contractors

In your September 9, 2014, letter you, on behalf of Mr. Hegarty, raise concerns that HERS raters are procuring building permits on behalf of contractors for whom they will be performing energy-testing services. Your letter describes this as a conflict of interest under the HERS regulations (1673(j) of Title 20 of the California Code of Regulations).

Section 1673(j), sets out the HERS conflict of interest regulations, and states in pertinent part:

- (2) Providers and Raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.
- (3) 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 - House Home Energy Rating.

EXCEPTION to Section 1673(j) (3): California Whole - House Home Energy Raters, who are working as or for a Building Performance Contractor certified under an Energy Commission - approved Building Performance Contractor program as part of a Provider's Rating System as specified in Section 1674(e) of the regulations and in the HERS Technical Manual, shall not be required to be an independent entity from the person(s) or firm(s) performing the work on a home. This exception shall not apply to California Field Verification and Diagnostic

Testing Raters performing field verification and diagnostic testing of newly constructed homes or alterations to existing homes to verify compliance with the requirements of Title 24, Part 6. In other words, the HERS conflict of interest regulations require raters and builders to be independent entities.

“Independent Entity” is defined in Section 1671 of the HERS regulations as follows:

Independent Entity means having no *financial interest* in, and *not advocating or recommending the use of any product or service as a means of gaining increased business with*, firms or persons specified in Section 1673(j). (Emphasis added.).

“Financial Interest” is defined in Section 1671 as follows:

Financial Interest means an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than five percent of the outstanding equity securities of a publicly traded corporation.

Commission staff and attorneys have analyzed your concerns and, based upon the facts presented in your letters and during the October 22, 2014 meeting, have found no evidence of a “financial interest” or of “advocating or recommending the use of a product or service as a means of gaining business with firms or persons specified in section 1673(j).” Consequently, we do not believe such an arrangement, as you have described, is sufficient to constitute a violation of section 1673(j) of Title 20.

We invite you to submit further facts for our consideration to demonstrate that when a rater who pulls building permits on behalf of a builder or subcontractor then performs the HERS testing, a financial interest exists, or that advocating for the service is done as a means of gaining increased business.

Issue #2: HERS raters selling or recommending products

In the meeting on October 22, 2014, and in your November 23, 2014 letter, you and Mr. Hegarty raised a separate concern about HERS raters selling construction materials to builders or contractors. At the meeting, you and Mr. Hegarty agreed to provide us evidence of specific instances in which this has occurred. On October 23, you carbon-copied me and Joan Walter on an email describing an example of one rater attempting to sell (what you describe as) a non-compliant product (Knauf Eco Seal) to builders.

Thank you for sharing this information with us. The Commission is examining whether raters selling materials to builders could create a conflict of interest under the HERS regulations. This question will be considered, along with other issues, in the upcoming

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informational proceeding referenced below. We encourage you to provide additional examples of such instances or others that could compromise the integrity of HERS raters through that process.

Order Instituting Informational Proceeding Order # 12-1114-6.

In the near future, Commission staff will be working in an open and public process within the Order Instituting Informational (OII) Proceeding Order #12-1114-6, to review HERS issues including, but not limited to, conflicts of interest. Commission staff anticipates this effort to begin in the first quarter of 2015 and we invite you to participate in that process. All activities within the OII will be publicly noticed to the service list and open to public participation.

During the OII proceeding the opportunity to propose new or revised regulation language will also be explored. Any proposed changes to the HERS regulations will be addressed in a future HERS rulemaking, which is also an open public process. We encourage all interested parties to participate in the procedural activities.

If you have any further questions or would like any additional information, please contact Rachel MacDonald at (916) 654-4862 or via email at Rachel.Macdonald@energy.ca.gov

Sincerely,



David Ashuckian
Deputy Director, Efficiency Division