

September 4, 2015

Bill Pennington
Deputy Division Chief
Efficiency and Renewable Energy Division
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

California Energy Commission

DOCKETED

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TN # 76178

SEP 25 2015

RE: HERS Conflict of Interest

Dear Mr. Pennington,

Per your request I raised the question of conflict of interest and HERS Raters at the CALBO Energy Commission Advisory Committee meeting held on 09/03/15. The issue as I understand it is that HERS Raters have begun providing additional services for contractors whose work they are inspecting and testing. According to the 2013 Reference Appendices, RA2.1, California Home Energy Rating Systems, in order to maintain their third party, objective status a HERS Rater should not have a business relationship with the contractor. In addition to the Reference Appendices, the committee reviewed the special inspection requirements found in Chapter 17 of the California Building Code as referenced in RA2.1. The conclusion of the committee is that a financial and/or business relationship between a HERS Rater and contractor represents a conflict of interest.

Our committee reviewed two (2) excerpts from RA2.1. The first included direction to enforcement agencies to consider HERS Raters as special inspectors.

"HERS Raters shall be considered special inspectors by enforcement agencies and shall demonstrate competence, to the satisfaction of the building official, for the visual inspections and diagnostic testing that they perform."

The special inspection requirements are found in chapter 17, section 1703.1.1 of the California Building Code, Title 24 Part 2.

"1703.1.1 Independence. An approved agency shall be objective, competent and independent from the contractor responsible for the work being inspected. The agency shall also disclose possible conflicts of interest so that objectivity can be confirmed."

Compliance with the objective and independent requirements in Chapter 17, requires special inspection agencies to be retained by the owner rather than the contractor. In order for a HERS Rater to obtain a permit for a contractor they are, by statute, required to be an agent of the contractor. As an agent they are no longer independent. It is the opinion of the committee that HERS Raters who provide services and /or are directly compensated by the contractor have compromised their objective and independent status.

The committee also considered the following requirement in RA2.1:

"Per California Code of Regulations, Title 20, Division 2, Chapter 4, Article 8, Section 1673(j)(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. 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 California Code of Regulations Title 20, Division 2, Chapter 4, Article 8, Sections 1671 and 1673(j)."

It seems clear that a financial and/or business arrangement between the contractor and HERS Rater is a violation of their independent status. The appearance of impropriety based on the relationship between the HERS Rater and the contractor can call into question the validity of the results even if the testing is rigorous and objective.

If you have any additional questions or if you would like our committee to provide additional assistance to the Energy Commission please contact me.

Sincerely,

Gregory C Mahoney
CALBO CEC Advisory Committee, Chair
1225 8th St #425
Sacramento, CA 95814
gmahoney@cityofdavis.org
530 757-5655