

**CALIFORNIA ENERGY COMMISSION**

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October 23, 2015

California Energy Commission

**DOCKETED****12-HERS-01**

TN # 76286

OCT 23 2015

Mr. Gregory C. Mahoney  
CALBO CEC Advisory Committee, CHAIR  
1225 8<sup>th</sup> Street, #425  
Sacramento, CA 95814

RE: HERS RATING SYSTEM AND CONFLICT OF INTEREST

Dear Mr. Mahoney:

Thank you for your letter dated September 4, 2015. Bill Pennington, whom is now working as the Efficiency Division's Senior Technical and Program Advisor, brought your letter to my attention. In your letter you raise concern over the practice of HERS raters providing additional services for contractors.

The Energy Commission is currently conducting an informational proceeding to investigate the HERS program (the "Informational Proceeding," 12-HERS-01). The issue of conflict of interest provisions has been raised and we anticipate addressing this issue as part of the Rulemaking. The HERS regulations currently do not explicitly prohibit HERS raters from pulling permits. In your letter you refer to the Reference Appendices, section RA2.1, which are adopted by reference in the California Building Energy Efficiency Standards. Section RA2.1 states:

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.

Under this provision, the enforcement agency has the authority to determine if a HERS rater serving as a special inspector is not demonstrating competency when performing field verifications and diagnostic testing, and to take the necessary action against this. Currently, the HERS regulations are limited, and set no other requirements regarding the role of HERS raters as special inspectors. The California Energy Commission recognizes that it is the prerogative of local governments to adopt local ordinances that address problems related to the performance of special inspectors that are operating within their jurisdictions. We advise local governments to base such local ordinances on demonstrated evidence that rater practices are resulting in inaccurate field verifications. The Energy Commission has not seen such evidence to date.

Your letter further raises concern over the "independence" of HERS raters that obtains permits for contractors. According to section 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

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from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested." An "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)."

In general, the business services provided by a HERS rater, such as the field verification and diagnostic testing services for which the Energy Commission's current regulations apply or other business services such as pulling permits, are normally done under contract. In most cases, performing services under contract does not mean that the HERS Rater is an employee of the entity that contracted those services. Furthermore, the contractor often pays the HERS rater to conduct the field verification and diagnostic testing. This does not violate any of the conditions stated above under the regulations regarding the HERS rater being an independent entity.

Your letter also states that the financial and / or business arrangement between contractors and HERS raters gives the appearance of impropriety. Section 1672(m) of the current HERS regulations states:

Providers and Raters shall not knowingly provide untrue, inaccurate, or incomplete rating information or report rating results that were not conducted in compliance with these regulations. Providers and raters shall not knowingly accept payment or other consideration in exchange for reporting a rating result that was not conducted or reported in compliance with these regulations.

The Energy Commission takes the requirements related to HERS rater conduct and responsibility very seriously. If you are aware of instances where the requirements have been violated, the Energy Commission encourages you to share them with us so that a thorough investigation can be conducted.

The Energy Commission will be clarifying and modifying the language of the HERS regulations during the Rulemaking process following the Informational Proceeding. Thank you for bringing your concerns to our attention.

I welcome you and other interested parties to continue to participate in these proceedings. If you have any further questions or need additional information, please contact Marcia Smith at (916) 651 -3754.

Sincerely,



Dave Ashuckian, P.E.  
Deputy Director

Cc: Marcia Smith, Acting Office Manager, Standards Implementation Office  
Lea Haro, Supervisor, Compliance and Enforcement Unit