STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

DOCKET
08-CRI-1
DATE OCT 0 2 2008
RECD. OCT 0 2 2008

Complaint / Request for Investigation Regarding Energy Sense / MASCO	)))	Docket Number 08-CRI-01

EFFICIENCY COMMITTEE ORDER SETTING DATES FOR PREHEARING CONFERENCE AND HEARING, AND REQUIRING THE PRODUCTION OF DOCUMENTS AND ADDITIONAL INFORMATION

Introduction and Summary

This order sets forth the dates for the prehearing conference and the hearing in this proceeding. This order also requires the parties to submit documents and responses to specific questions, in advance of the prehearing conference.

Background and Procedural History

On July 9, 2008, California Living & Energy and Duct Testers, Inc. (collectively, "complainants") filed a written complaint with the Energy Commission, pursuant to title 20, Section 1231 of the California Code of Regulations.[1]

By way of an Efficiency Committee ("Committee") order dated August 5, 2008, the complaint was served by certified mail on Energy Sense / MASCO Group of Companies and Subsidiaries (collectively, "respondents"), and via first class mail to interested parties. The return receipts show that respondents received the complaint on August 8, 2008. The order was also sent to those identified as interested parties in Appendix 2 of that order.

On August 28, 2008, the respondents filed with the Energy Commission a written answer to the complaint. Respondents denied they were in violation of the applicable regulations, and asserted several affirmative defenses to the allegations contained in the complaint.

[1] References to section numbers are to those in title 20 of the California Code of Regulations unless otherwise noted.

Scheduling of Prehearing Conference and Hearing Dates

Pursuant to Section 1234, subd. (a), the hearing in a complaint proceeding is to be held no later than 90 days after the date that the complaint is filed; in this proceeding, the hearing would need to occur by October 7, 2008. Section 1203, subd. (f), gives the Chairman the power, for good cause and upon proper notice, to shorten or lengthen the time required for compliance with any provision of title 20.

The Committee, of which the Chairman is a Member, finds that additional documentation from the parties is needed in order to evaluate the claims made in the complaint and the answer. Also, the Committee finds that directing specific questions to the parties, and receiving responses to those questions in advance of the hearing, will aid the decision-making process. The Committee wishes to provide the parties sufficient time to comply with all the requests for documents and to respond to all the questions posed, beyond the October 7, 2008, date.

Section 1208 allows the Presiding Member to schedule a conference with the parties at any time for the purpose of formulating the issues; organizing the questioning of witnesses; determining the number of witnesses; providing for the exchange of exhibits or prepared statements; and such other matters as may expedite the orderly conduct of the proceedings. The Committee finds that a prehearing conference in this matter is necessary to clearly understand and articulate the issues to be addressed in the hearing, ensure that all documents and other information have been provided, and address outstanding issues in advance of the hearing.

For these reasons, the Committee and the Chairman find good cause to extend the date of the hearing in this matter beyond the 90 days provided for in Section 1234, subd. (a). The dates of the prehearing conference and hearing are specified in the "Order" section, below.

Production of Documents and Responses to Questions; Opportunity to Submit Additional Information

Pursuant to Section 1203, subd. (a), the Chairman has the power to request and secure such information as is relevant and necessary in carrying out the purposes of any proceeding. Section 1675 also requires each HERS provider to provide all information specified by the Energy Commission in any complaint proceeding.

The Committee finds that certain documents, and the responses to specific questions, are needed to analyze the issues involved in this proceeding and to make

a determination in the matter. In particular, the required documents and responses will help the Committee to determine the precise nature of the relationship between the two respondents; the relationships between the respondents and individual builders, installers, and other contractors; and whether these relationships are a conflict of interest under the California Home Energy Rating System Program regulations.

Further, the Committee believes that it will be beneficial to allow any party to submit any additional information to the Energy Commission, before the date of the prehearing conference, which the party believes will assist the Committee in analyzing and deciding this matter. This order provides time for the parties to provide and review the additional information prior to the prehearing conference, and to prepare for the hearing.

Order

Pursuant to Section 1208, and the authority of the Chairman given by Section 1203, subd., (d), to set the time and place for hearings, the Committee orders the following dates, times, and locations for the prehearing conference and hearing in this matter:

Prehearing Conference

November 12, 2008, at 9:30 a.m.
Hearing Room A
California Energy Commission
1516 Ninth Street
Sacramento, California

Hearing

December 10, 2008, at 9:00 a.m.
Hearing Room A
California Energy Commission
1516 Ninth Street
Sacramento, California

Pursuant to Sections 1203, subd. (a), and 1675, the Committee directs the following documents to be provided, and the following questions answered, by the respectively-identified parties:

From the Respondents[2]:

1) Copies of all contracts between Masco Corporation ("Masco") and EnergySense, Inc. ("EnergySense");

2) Copies of all contracts between Energy Sense and builders;

3) Copies of contracts between Masco or any Masco-related company[3] that mentions completion of quality assurance by EnergySense or field verification for the purpose of Title 24 compliance.

4) Copies of any advertising or other informational materials provided to builders by any Masco-related company that identifies quality assurance or field verification provided by or through EnergySense.

5) Percentage of corporate voting shares that Masco owns, directly or indirectly through one or more of its related companies, of EnergySense;

6) Names of any persons that are employed as a board member or officer in more than one of the companies under the Masco corporate structure, including any Masco-related company;

7) Does Masco have corporate or other authority over EnergySense for any of the following:

   a. Selecting directors and corporate officers;

   b. Appointing a majority of the members of the governing board;

   c. Using or directing the use of the individual assets of EnergySense to achieve the objective of Masco;

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[2] The Committee recognizes that partial answers to some of the questions are already contained in the respondents' answer to the complaint, but finds that the questions need be posed as written in order to obtain more complete answers.

[3] "Masco-related company" or "related company" means any parent, affiliate, or subsidiary company or entity of Masco, or any company or entity related to Masco by ownership interest. This includes, but is not limited to, those entities identified in lines 19 through 21 of page 2 of the respondents' answer to the complaint (i.e., Builder Services Group, Inc.; American National Services, Inc.; and Masco Contractor Services, Inc.).

d. Examination of financial reports and business plans, or otherwise hold accountable EnergySense and its management for performance expectations;

e. Voting provisions in the articles of incorporation of EnergySense, or provisions that prohibit amendments of said articles without the approval of Masco?

8) Did Masco prepare or authorize any of the bylaws of EnergySense defining the designation and authority of officers, their terms of office, and their removal (for cause or otherwise)?

9) Do the bylaws of EnergySense include procedures whereby Masco elects and removes directors of EnergySense, or prohibit amendments of its bylaws without the approval of Masco?

10) Does Masco or any Masco-related company have a debt agreement with EnergySense?

11) Does Masco or any Masco-related company have any employees who are also employees of EnergySense?

12) Does Masco or any Masco-related company, other than EnergySense, mention EnergySense in any written, verbal, radio, television, internet or e-mail advertising or information?

13) Does EnergySense mention Masco or any Masco-related company in any written, verbal, radio, television, internet or e-mail advertising or information?

14) Does Masco or any Masco-related company, other than EnergySense, provide customer referrals to EnergySense?

15) Does EnergySense provide customer referrals to Masco or any Masco-related company?

16) Does Masco or any Masco-related company, besides EnergySense, mention in bid responses or price sheets any services provided by EnergySense?

17) Does EnergySense mention in bid responses or price sheets any services provided by Masco or any Masco-related company?

From California Home Energy Efficiency Rating System (CHEERS):

1) Copies of all rater agreements between CHEERS and Energy Sense; between CHEERS and any EnergySense employee; between CHEERS and any other Masco-related company; between CHEERS and any Masco employee; and between CHEERS and any employee of a Masco-related company.

The documents listed, and written answers to the questions posed, in this order shall be received by the Energy Commission's Docket Unit no later than October 31, 2008. Further, if the complainants, respondents, or any other interested party to this proceeding wishes to submit additional, relevant information, they shall submit such information to the Dockets Unit by October 31, 2008.

Dated: October 2, 2008

ARTHUR H. ROSENFELD, Ph.D.
Commissioner
California Energy Commission
Presiding Member, Efficiency Committee

JACKALYNE PFANNENSTIEL
Chairman
California Energy Commission
Member, Efficiency Committee

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

Complaint / Request for Investigation **REGARDING ENERGY SENSE / MASCO**	**DOCKET NO. 08-CRI-01** **PROOF OF SERVICE LIST**

INSTRUCTIONS: All parties shall (1) file a printed, original signed document plus 12 copies OR file one original signed document and e-mail the document to the Docket address below, AND (2) all parties shall also send a printed OR electronic copy of the document, plus a proof of service declaration, to each of the entities and individuals on the proof of service list:

CALIFORNIA ENERGY COMMISSION
Attn: DOCKET NO. 08-CRI-01
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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525 Market Street, 26th Floor
San Francisco, CA 94105-2708

California Living & Energy
Attn: Bill Lilly, President
3015 Dale Court
Ceres, CA 95307

Carol A. Davis
CHEERS Legal Counsel
3009 Palos Verdes Drive West
Palos Verde Estates, CA 90274

Certified Energy Consulting
Attn: John Richau, HERS Rater
4782 N. Fruit Avenue
Fresno, CA 93705

Duct Testers, Inc.
Attn: Dave Hegarty
P.O. Box 266
Ripon, CA 95366

Energy Inspectors
Attn: Galo LeBron, CEO
1036 Commerce Street, Suite B
San Marcos, CA 92078

ConSol
Attn: Mike Hodgson
7407 Tam O'Shanter Drive
Stockton, CA 95210-3370

California Certified Energy Rating & Testing Services (CalCERTS)
Attn: Mike Bachand
31 Natoma Street, Suite 120
Folsom, CA 95630

California Building Performance Contractors Association (CBPCA)
Attn: Randel Riedel
1000 Broadway, Suite 410
Oakland, CA 94607

California Home Energy Efficiency Rating System (CHEERS)
Attn: Robert Scott
20422 Beach Blvd.
Huntington Beach, CA 92648

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DECLARATION OF SERVICE

I, Lynn Tien-Tran, deposited copies of the attached Efficiency Committee Order Setting Dates for Prehearing Conference and Hearing, and Requiring the Production of Documents and Additional Information in the United States mail on October 2, 2008, at Sacramento with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.