

1 STATE OF CALIFORNIA  
2 ENERGY RESOURCES CONSERVATION  
3 AND DEVELOPMENT COMMISSION  
4

5 CALIFORNIA LIVING & ENERGY (a  
6 division of William Lilly & Associates,  
7 Inc.) and DUCT TESTERS, INC.,

8 Complainants,

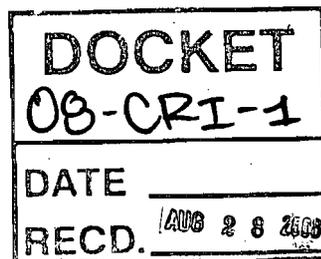
9 vs.

10 MASCO CORPORATION and  
11 ENERGYSense, INC.,

12 Respondents.

Docket Number 08-CRI-01

ANSWER OF RESPONDENTS MASCO  
CORPORATION AND  
ENERGYSense, INC. TO  
COMPLAINT/REQUEST FOR  
INVESTIGATION



13 Respondents Masco Corporation and EnergySense, Inc. (hereinafter referred to as "Masco"  
14 or "EnergySense," respectively, or "respondents") hereby respond to the complaints filed by  
15 California Living & Energy and Duct Testers, Inc. (hereinafter "complainants") as follows:

16 1. Respondents admit that EnergySense is a subsidiary of Masco Corporation, but deny  
17 that the relationship violates the relevant California Code of Regulations, including but not  
18 limited to Title 20, sections 1670-1673.

19 2. Respondents deny that Masco, EnergySense, and/or any other Masco subsidiary are in  
20 violation of California Code of Regulations, Title 20, sections 1670-1673 and Title 24, Chapter 7  
21 of the ACM Manual.

22 3. Respondents deny that Masco and/or its subsidiaries violated the requirements of the  
23 2005 Residential ACM Manual as alleged in part III, paragraphs A through F of the complaint  
24 filed by California Living & Energy (respondents understand that Duct Testers, Inc. has simply  
25 joined in the complaint filed by California Living & Energy; accordingly, respondents' answer  
26 does not specifically address the joinder letter filed by Duct Testers, Inc.).

27 To the extent not specifically admitted or denied above, respondents hereby deny each and  
28 every remaining material allegation alleged in the complaint.

1 AFFIRMATIVE DEFENSES

2 First Affirmative Defense:

3 The complainants are entitled to no relief under the facts alleged because the complaint  
4 fails to allege facts sufficient to constitute a cause of action.

5 Second Affirmative Defense:

6 The complaint is without merit because all of respondents' alleged actions were lawful  
7 and in full compliance with all applicable codes and statutes, including but not limited to  
8 California Code of Regulations, Title 20, Section 1673.

9 Specifically, to the extent EnergySense, Inc. has inspected and/or tested installation work  
10 performed by other Masco companies, it has done so within the parameters of the relevant  
11 statutes. Section 1673(i) requires a rater to be an "independent entit[y]" from the builder or  
12 contractor. An "independent entity" is defined as "having no financial interest in, and not  
13 advocating or recommending the use of any product or service as a means of gaining increased  
14 business with," a builder or subcontract installer. Cal. Code of Regs. § 1671. A "financial  
15 interest" is defined as "an ownership interest, debt agreement, or employer/employee  
16 relationship. . . ." Cal. Code of Regs. § 1671.

17 EnergySense has performed no inspection or testing work directly for Masco  
18 Corporation. Rather, EnergySense has inspected and tested installation work for builders  
19 through contracts it has entered into with separate Masco subsidiaries, Builder Services Group,  
20 Inc. ("BSG"), American National Services, Inc. ("ANS"), and Masco Contractor Services of  
21 California, Inc. ("MCS of CA"). Consistent with the terms of the relevant statutes, EnergySense  
22 has no financial interest in and operates independently of those Masco subsidiaries:

- 23
- 24 • There is no direct or indirect ownership or subsidiary relationship between  
EnergySense and BSG, ANS or MCS of CA.
  - 25 • EnergySense has no debt agreements with BSG, ANS or MCS of CA.
  - 26 • EnergySense shares no employees with BSG, ANS or MCS of CA.
  - 27 • Although EnergySense, BSG, ANS and MCS of CA are fully owned by Masco  
28 Corporation, the parent company is a holding company that provides

1 administrative and high-level corporate governance support.

2 Moreover, the business relationship between EnergySense and the other Masco  
3 subsidiaries is governed by contract and not by Masco Corporation:

- 4 • The contracts EnergySense has entered into with BSG, ANS and MCS of CA  
5 establish EnergySense as an independent contractor.
- 6 • Under the terms of the contracts, EnergySense is accountable directly to the  
7 builders for the services it provides.
- 8 • The contracts between EnergySense and each of the other three Masco  
9 subsidiaries are not exclusive and provide that neither company is obligated to  
10 use the other.
- 11 • The contracts prohibit EnergySense from recommending or referring work to the  
12 other three Masco subsidiaries.

13 Finally, the thoroughness, accuracy and independence of the rating services performed  
14 by EnergySense are demonstrated and assured by:

- 15 • The EnergySense raters' accountability to HERS provider California Home  
16 Energy Efficiency Rating Services ("CHEERS") to maintain their individual  
17 certifications.
- 18 • Routine monitoring by CHEERS of the testing and inspection results of  
19 EnergySense's raters.
- 20 • The actions taken by EnergySense raters to reject installation work performed by  
21 other Masco subsidiaries that failed to meet Title 24 standards.

22 Third Affirmative Defense:

23 The complaint is without merit because the actions of the raters employed by  
24 EnergySense were lawful and in full compliance with all applicable codes and statutes,  
25 including but not limited to California Code of Regulations, Title 20, Section 1673. Consistent  
26 with the relevant statutes, the raters are independent entities from the builders and from  
27 contractors such as BSG, ANS or MCS of CA. The raters have no financial interest in the  
28 builders or contractors, including subcontractor installers, and do not advocate the use of any

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product or service as a means of gaining increased business with a builder or contractor.

Fourth Affirmative Defense:

Respondents currently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Respondents reserve the right to assert additional defenses in the event that they would be appropriate.

REQUEST FOR HEARING

Pursuant to Article IV, Title 20, Section 1234 of the California Code of Regulations, and in order to protect respondents' due process rights, respondents hereby request a hearing before the Commission of sufficient duration to allow respondents ample opportunity to present and cross-examine witnesses. In order to adequately prepare for the hearing, respondents respectfully request that the hearing commence on or after October 6, 2008. Respondents anticipate the hearing will last several days.

PRAYER FOR RELIEF

WHEREFORE, respondents pray that the Commission:

1. Deny complainants' complaint;
2. Dismiss the present action with prejudice; and
3. Grant such other and further relief as the Commission deems just and proper.

Dated: August \_\_, 2008

SONNENSCHN NATH & ROSENTHAL LLP

By   
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MASC0 CORPORATION and  
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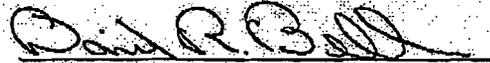
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**DECLARATION**

I, David R. Bell, declare as follows:

I have read the "Answer of Respondents Masco Corporation and EnergySense, Inc to Complaint/Request for Investigation" and know its contents. I declare to the best of my knowledge and under penalty of perjury to the truth and accuracy of all factual allegations contained in this Answer.

Date: 8/27/08



**David R. Bell**

**President, EnergySense Inc.**

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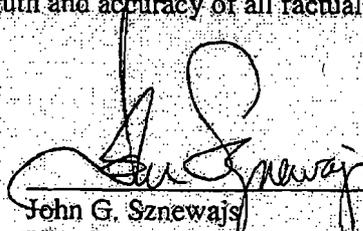
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**DECLARATION**

I, John G. Sznewajs, declare as follows:

I have read the "Answer of Respondents Masco Corporation and EnergySense, Inc to Complaint/Request for Investigation" and know its contents. I declare to the best of my knowledge and under penalty of perjury to the truth and accuracy of all factual allegations contained in this Answer.

Date: August 28, 2008

  
\_\_\_\_\_  
John G. Sznewajs  
Vice President - Corporate Development,  
Treasurer and Chief Financial Officer

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- HAND DELIVERY: I caused such document to be served by hand delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 28, 2008, at San Francisco, California.

  
DIANE VIVIAN DONNER

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