

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIFORNIA LIVING & ENERGY (a
division of William Lilly & Associates, Inc.)
and DUCTTESTERS, INC.,

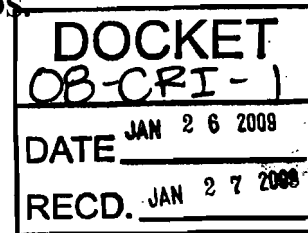
Docket Number 08-CRI-01

Complainants,

**PETITIONERS APPLICATION FOR
SUBPOENA TO PRODUCE BUSINESS
RECORDS.**

vs.

MASCO CORPORATION and
ENERGYSENSE, INC.,
Respondents.



Pursuant to the relevant sections of the California Code of Regulations, Complainants
CALIFORNIA LIVING AND ENERGY and DUCTTESTERS, INC. hereby respectfully request
that the California Energy Commission (hereinafter "the Commission") issue subpoenas for the
Production of Business Records to the entities described below.

I.
COMMISSIONS AUTHORITY TO ISSUE SUBPOENAS

The Commission's power to issue the requested subpoenas is reposed within Title 20,
section 1203 of the California Code of Regulations. This section provides that the chairman or
presiding member of the Commission may "[I]ssue subpoenas and subpoenas duces tecum at the
direction of the Commission, on his motion or upon application of any party."

II.
**IDENTIFICATION OF ENTITIES FROM WHOM THE
COMMISSION IS REQUESTED TO SEEK DOCUMENTS**

Complainants requests that documents be subpoenaed from the following entities:

- 1) The custodian of records of the California Home Energy Efficiency
Rating Service (a.k.a "CHEERS") located at 20422 Beach Blvd., Suite
235, Huntington Beach, CA, 92648;
- 2) The custodian of records of the California Energy Commission,
located at 1516 Ninth Street, Sacramento, California, 95814.

III.
IDENTIFICATION OF DOCUMENTS REQUESTED
TO BE SOUGHT

Complainants respectfully request that the Commission issue subpoenas for the production of the following documents:

i) From the California Home Energy Efficiency Rating Service:

Any and all documents relating to any investigations conducted by the California Home Energy Efficiency Rating Service ("CHEERS") into alleged conflicts of interest or other violations of applicable Codes and Regulations, (collectively the "Alleged Conflicts") between Masco, any other Masco-related entity and Energy Sense Inc. including but not limited to:

1. Initial complaints;
2. All written communications between Complainants and CHEERS and/or their employees, agents or independent contractors regarding the Alleged Conflicts;
3. All written correspondence between CHEERS and Masco, or any other Masco-related entity, regarding the Alleged Conflicts, including, but not limited to, American National Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company or any other Masco-related entity for whom Energy Sense, Inc. performs services.
4. Any and all reports, notes, or other memoranda generated by CHEERS, and/or their agents, employees or independent contractors upon completion of CHEERS' investigation into the Alleged Conflicts.
5. Any and all correspondence between the California Energy Commission and CHEERS, their employees, agents or independent contractors concerning the Alleged Conflicts.
6. Any and all documents concerning funds provided by Masco or any other Masco-related entity for purposes of education and/or training for CHEERS raters.

ii) From the California Energy Commission:

Any and all documents relating to any investigations conducted by the California Energy Commission ("CEC") into alleged conflicts of interest or other violations of applicable Codes

1 and Regulations, (collectively the "Alleged Conflicts") between Masco, any other Masco-related
2 entity and Energy Sense Inc. including but not limited to:

- 3 1. Initial complaints, including, but not limited to, those lodged by either
4 California Living and Energy and/or Duct Testers (hereinafter the
5 "Complainants");
- 6 2. All written and/or electronic communications between the CEC and the
7 Complainants regarding the Alleged Conflicts;
- 8 3. All written correspondence between the CEC and Masco, or any other
9 Masco-related entity, regarding the Alleged Conflicts, including, but not
10 limited to, American National Services, Inc., Builder Services Group, Inc.,
11 Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast
12 Insulation, Western Insulation, Sacramento Building Products Company
13 or any other Masco-related entity for whom Energy Sense, Inc. performs
14 services;
- 15 4. Any and all CEC Board minutes, reports, notes, or other memoranda,
16 written or electronic, generated by the CEC upon completion of the CEC's
17 investigation into the Alleged Conflicts;
- 18 5. Any and all correspondence between the California Home Energy
19 Efficiency Rating Service ("CHEERS") and the C.E.C. and/or agents,
20 representatives and employees of the C.E.C. concerning the Alleged
21 Conflicts;
- 22 6. Any and all documents concerning funds provided by Masco or any other
23 Masco-related entity for purposes of education and/or training for
24 CHEERS raters, including, but not limited to, any special training classes
25 conducted by, for, or on behalf of Masco or a Masco-related entity
26 including, but not limited to, American National Services, Inc., Builder
27 Services Group, Inc., Masco Contractor Services of California, Inc.,
28 Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento
Building Products Company;
7. Any and all CEC Board minutes or any other documents, notes or other
written memoranda in which the topic of the employees, agents or
representatives of Masco and/or any other Masco-related entities,
American National Services, Inc., Builder Services Group, Inc., Masco
Contractor Services of California, Inc., Energy Sense, Inc., Coast
Insulation, Western Insulation, Sacramento Building Products Company,
becoming CHEERS certified Raters were discussed;
8. Any and all CEC Board minutes, or any other documents, notes or other

1 written or electronic memoranda concerning any discussion, consultation
2 or conversation regarding attempts by Masco or any other Masco-related
3 entity, including, but not limited to, American National Services, Inc.,
4 Builder Services Group, Inc., Masco Contractor Services of California,
5 Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento
6 Building Products Company to obtain HERS Rater certification.

- 7 9. Any and all CEC Board minutes, or any other documents, notes or other
8 written or electronic memoranda concerning any discussion, consultation
9 or conversation regarding any de-certification of HERS Raters employed
10 by Masco or any other Masco-related entity, including, but not limited to
11 American National Services, Inc., Builder Services Group, Inc., Masco
12 Contractor Services of California, Inc., Energy Sense, Inc., Coast
13 Insulation, Western Insulation, Sacramento Building Products Company .

14 **IV.**
15 **STATEMENT OF WHY THE REQUESTED**
16 **DOCUMENTS ARE NEEDED**

17 The present matter has been an issue among the various entities going back as far as
18 2005. The Complainants have previously engaged in extensive communications with both
19 CHEERS and the Commission regarding their concerns over these alleged conflicts of interest.
20 Additionally, Complainants are informed and believe that investigations have been conducted
21 into the alleged conflicts by both CHEERS and the Commission. However, the results of those
22 investigations have never been disclosed to the Complainants. Whether these investigations
23 were, in fact, carried out and, most importantly, the scope and results thereof are of pivotal
24 important as to the determination of conflicts of interest under the applicable standards enforced
25 by the California Energy Commission and the manner in which HERS raters receive their
26 certifications.

27 Dated: January 26, 2009

28 GIANELLI & ASSOCIATES,
A Professional Law Corporation

By: 

BRETT L. DICKERSON

Attorneys for California Living & Energy

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PROOF OF SERVICE

I, NIVES GUTHRIE, declare:

I am a citizen of the United States and a resident of the County of Stanislaus, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1014 – 16th Street, Modesto, California 95354.

I am readily familiar with the business practice for collection and processing of correspondence, and on January 26, 2009 I served:

PETITIONERS APPLICATION FOR SUBPOENA TO PRODUCE BUSINESS RECORDS.

in the following manner and addressed as set forth below;


xx **Via United States Postal Service:** Such correspondence was enclosed in a sealed envelope with postage thereon fully prepaid, addressed as stated below. I caused such envelope to be deposited in the U.S. Mail at Modesto, California through the firm's ordinary course of business.

PLEASE SEE ATTACHMENT

 Via Federal Express. Such correspondence was enclosed in a sealed envelope with delivery charges thereon fully prepaid, addressed as stated below. I caused such envelope to be presented to Federal Express at my business address at or about 3:00 p.m. through the firm's ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and if called could truthfully testify thereto.

Dated: January 26, 2009 at Modesto, California.



NIVES GUTHRIE

1 Dockets Unit
2 California Energy Commission
3 1516 Ninth Street, MS 4
4 Sacramento, CA 95814

5 STEVEN S. FRANKEL
6 Sonnenschein Nath & Rosenthal LLP
7 525 Market Street, 26th Floor
8 San Francisco, CA 94105-2708

9 Carol A. Davis
10 CHEERS Legal Counsel
11 3009 Palos Verdes Drive West
12 Palos Verde Estates, CA 90274

13 Certified Energy Consulting
14 Attn: John Richau, HERS Rater
15 4782 N. Fruit Avenue
16 Fresno, CA 93705

17 California Certified Energy Rating &
18 Testing Services (CalCERTS)
19 Attn: Mike Bachand
20 31 Natoma Street, Suite 120
21 Folsom, CA 95630

22 California Building Performance
23 Contractors Association (CBPCA)
24 Attn: Randel Riedel
25 1000 Broadway, Suite 410
26 Oakland, CA 94607

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

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

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ConSol
Attn: Mike Hodgson
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