

<b>DOCKET</b> 08-CRI-1
DATE FEB 17 2009
RECD FEB 17 2009

STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

*Complaint / Request for Investigation* ) Docket Number 08-CRI-01  
*Regarding Energy Sense / MASCO* )  
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**EFFICIENCY COMMITTEE DECISION AND ORDER REGARDING  
COMPLAINANTS' FIRST AMMENDED SUBPOENA TO PRODUCE  
BUSINESS RECORDS FROM THE CALIFORNIA HOME ENERGY  
EFFICIENCY RATING SERVICE; AND SUBPOENA**

Decision and Order

Having read and considered the Complainants'<sup>1</sup> First Amended Application for Subpoena to Produce Business Records, and upon a finding of good cause, it is the decision of the Efficiency Committee to subpoena and order the production of information and documents from the California Home Energy Efficiency Rating Service (CHEERS), pursuant to the authority given to the Energy Commission by Section 25210 of the California Public Resources Code and Section 11181, subd. (e), of the California Government Code, and to the Presiding Member of the Efficiency Committee by Section 1203, subd. (a), of Title 20 of the California Code of Regulations<sup>2</sup>, as follows:

Any and all documents relating to any investigations conducted by CHEERS into alleged violations of Section 1673(i) of Title 20 committed by Masco Corporation ("Masco"), any Masco subsidiary (including but not limited to Energy Sense, Inc.), and any other Masco-related entity, relating to the field verification and diagnostic testing services Energy Sense, Inc., performs for Title 24 compliance purposes under the California Home Energy Rating System Program (the "Alleged HERS Conflict of Interest

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<sup>1</sup> Complainants in this proceeding are California Living and Energy and Duct Testers, Inc. The pleading filed by Complainants identifies them in the heading as "Petitioners." This Decision and Order correctly identifies them as "Complainants."

<sup>2</sup> All references to Title 20 and Title 24 are to the California Code of Regulations.

Violations") described in Sections 1670 through 1675 of Title 20, 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 HERS Conflict of Interest Violations;
3. All written correspondence between CHEERS and Masco, or any other Masco-related entity, regarding the Alleged HERS Conflict of Interest Violations, 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 subsidiary or Masco-related entity for whom Energy Sense, Inc., performs HERS field testing and verification 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 HERS Conflict of Interest Violations;
5. Any and all correspondence between the California Energy Commission and CHEERS, their employees, agents or independent contractors concerning the Alleged HERS Conflict of Interest Violations; and
6. Any and all documents concerning funds provided by Masco or any other Masco subsidiary or Masco-related entity for purposes of education and/or training for CHEERS raters.

This decision shall also constitute the subpoena itself and shall be served on CHEERS, via certified mail – return receipt requested, at the following address:

**CHEERS**  
**20422 Beach Blvd., Suite 235**  
**Huntington Beach, CA 92648**

The original response to this subpoena and request for documents shall be mailed to:

**Dockets Unit  
Attn: Docket # 08-CRI-01  
California Energy Commission  
1516 Ninth Street, MS 4  
Sacramento, CA 95814**

Such response shall be filed with the Dockets Unit by **Friday, March 6, 2009**. Copies of the responses are to be sent to the Complainants and Respondents, also to be delivered by March 6, 2009, at the following addresses:

Complainants:

**Brett L. Dickerson, Esq.  
Gianelli & Associates  
1014 16<sup>th</sup> Street  
P.O. Box 3212  
Modesto, CA 95353**

Respondents:

**Steven H. Frankel, Esq.  
Sonnenschien Nath & Rosenthal LLP  
525 Market Street, 26<sup>th</sup> Floor  
San Francisco, CA 94105-2708**

Dated: February 17, 2009



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ARTHUR H. ROSENFELD

Commissioner  
California Energy Commission  
Presiding Member, Efficiency Committee