

<b>DOCKET</b>	
08-CRI-1	
<b>DATE</b>	FEB 25 2009
<b>RECD.</b>	FEB 26 2009

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,

vs.

**PETITIONERS SUPPLEMENTAL  
INTEROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS  
FROM MASCO AND ENERGY SENSE**

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. herby respectfully request that the California Energy Commission (hereinafter "the Commission") issue subpoenas for the following Special Interrogatories and the Production of the following documents from 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 AND  
RESPONSES TO INTEROGATORIES**

Complainants requests that responses to the following special interrogatories and the following described documents be subpoenaed from the following entities:

- 1) The custodian of records (as to the documents demands) and the person most knowledgeable (as to interrogatory responses) at Respondent MASCO Corporation
- 2) The custodian of records (as to document demands) and person most knowledgeable (as to interrogatory responses) at Respondent Energy Sense.

**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 Respondent MASCO:**

1. All documents identifying the terms and conditions of MASCO's acquisition of Energy Sense, Inc. as a subsidiary of MASCO;
2. Any and all documents concerning the inclusion of the Financial Performance of Energy Sense, Inc. into the financial statements of MASCO for the fiscal years ending December 31, 2002 through and including December 31, 2008, including, but not limited to those contained in MASCO's Annual Reports and Form 10-Ks. In this and all following document demands and Special Interrogatories, the term "Financial Performance" shall include, but not be limited to: 1) Net Sales; 2) Operating Profit; 3) Income Before Taxes; 4) Net income; 5) Depreciation & Amortization; 6) Working Capital); 7) Assets; 8) Liabilities, and 9) Shareholder's Equity;
3. Any and all documents concerning the inclusion of the Financial Performance of Masco Building Products into the financial statements of MASCO for the fiscal years ending December 31, 2002 through and including December 31, 2008, including, but not limited to, those contained in MASCO's Annual Reports and Form 10-Ks;

4. Any and all documents concerning any loans, cash advances or any other manner of financing provided by MASCO or any other MASCO-related entity to Energy Sense, Inc.

**ii) From Respondent Energy Sense:**

1. All year-end financial statements generated by Energy Sense, Inc. subsequent to their acquisition by MASCO, including, but not limited to, those contained in MASCO's Annual Reports and Form 10-Ks; 3. Any and all documents concerning the inclusion of the Financial Performance of Energy Sense, Inc. into the financial statements of Masco Contractor Services for the fiscal years ending December 31, , including, but not limited to, those contained in MASCO's Annual Reports and Form 10-Ks **IV**.

**SUPPLEMENTAL SPECIAL INTERROGATORIES**

**i. From Respondent MASCO**

1. Did you acquire Energy Sense, Inc as a subsidiary?
2. If the answer to the preceding Interrogatory is "No", please identify the nature of any relationship, financial or otherwise, between MASCO and Energy Sense, Inc.
3. Was the Financial Performance of Energy Sense, Inc. included in the financial figures contained in MASCO's Annual Reports and/or Form 10-Ks for any of the fiscal years ending December 31, 2002 through and including December 31, 2008?;
4. If the answer to the proceeding Interrogatory is "Yes", please identify the fiscal years in which Energy Sense Inc.'s Financial Performance was included in the financial figures contained in MASCO's Annual Report and Form 10-K.
5. Was the Financial Performance of Masco Contractor Services

1 included in the financial figures contained in MASCO's Annual Reports  
2 and Form 10-Ks for any of the fiscal years ending December 31, 2002  
3 through and including December 31, 2008?

4 6. Does MASCO or any other MASCO-related entity sell or install  
5 Milgard windows in California?

6 7. Does MASCO or any other MASCO-related entity install  
7 insulation in California?

8 8. Does MASCO or any other MASCO-related entity sell or install  
9 ductwork in California?

10 9. Is the installation of Milgard windows in California ever subject to  
11 Title 24 HERS testing?

12 10. Is the installation of insulation in California ever subject to Title 24  
13 HERS testing?

14 11. Is the installations of ductwork in California ever subject to Title  
15 24 HERS testing?

16 12. Has any MASCO-related entity, including, but not limited to  
17 Energy Sense, Inc ever conducted Title 24/HERS testing of a home  
18 improved with Milgard windows?

19 13. Has any MASCO-related entity, including, but not limited to  
20 Energy Sense, Inc., ever conducted Title 24/HERS testing of a home  
21 improved with insulation sold or installed by a MASCO-related entity?

22 14. Has any MASCO-related entity, including, but not limited to  
23 Energy sense, Inc., ever conducted Title 24/HERS testing of a home  
24 improved with ductwork sold or installed by MASCO-related entity.

25 15. Has Rick Davenport, whom Claimants are informed and believe is  
26 the Vice President of Masco Home Services, Inc., ever occupied any  
27 position as either an officer, director or shareholder, of Energy Sense, Inc.  
28 between 2002 and the present?

16. Has Rick Davenport, whom Claimants are informed and believe is the Vice President of Masco Home Services, Inc. ever occupied any position as either an officer, director or shareholder, of Masco Contractor Services between 2002 and the present?

17. Please identify all positions that David Bell has held as either an officer, director or shareholder of any Masco-related entity between 2002 through the present.

**ii. From Respondent Energy Sense, Inc.:**

1. Do you provide information concerning your Financial Performance to MASCO?

2. Do you provide information relating to your Financial Performance to Masco Contractor Services?

3. Has Energy Sense, Inc. performed any Title 24/HERS testing on any structure in California which incorporated Milgard windows?

4. Has Energy Sense, Inc. performed any Title 24/HERS testing on any structure in California which incorporates insulation sold and/or installed by a MASCO-related entity?

5. Has Energy Sense, Inc. performed any Title 24/HERS testing on any structure in California which incorporates ductwork sold and/or installed by a MASCO-related entity?

6. Has Energy Sense, Inc. performed any Title 24/HERS testing on any structure in California which was built or improved, as a contractor or subcontractor, by a MASCO-related entity?

7. Does Energy Sense, Inc. vary the pricing of their Title 24/HERS testing services based upon the installations they are testing having been carried out by a MASCO-related entity?

8. Please provide the fees charged by Energy Sense, Inc to carry out Title 24/HERS testing within the central San Joaquin Valley.

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**V.**  
**STATEMENT OF WHY THE REQUESTED**  
**DOCUMENTS ARE NEEDED**

As previously addressed with the Commission in an earlier application, the present matter has been an issue among the various entities going back as far as 2005. The crux of the current matter revolves around 1) the performance of HERS testing by Energy Sense, Inc. on installations carried out by other entities owned, controlled or affiliated with Respondent MASCO; and 2) the relationship between Energy Sense, Inc., financial or otherwise, and MASCO. The documents requested, and the interrogatories propounded bear directly on these relationships and are reasonably calculated to obtain relevant information regarding the issues pending before the Commission.

GIANELLI & ASSOCIATES  
A Professional Law Corporation

By: 

BRETT L. DICKERSON

Attorneys for California Living & Energy

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Modesto, CA 95353  
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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 – 16<sup>th</sup> Street, Modesto, California 95354.

I am readily familiar with the business practice for collection and processing of correspondence, and on February 25, 2009 I served:

**PETITIONERS SUPPLEMENTAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS FROM MASCO AND ENERGY SENSE**

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**

XX **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.

Dennis L. Beck  
Senior Staff Counsel  
California Energy Commission  
1516 Ninth Street, MS-14  
Sacramento, CA 95814

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: February 25, 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, 26<sup>th</sup> 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  
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7407 Tam O'Shanter Drive  
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