

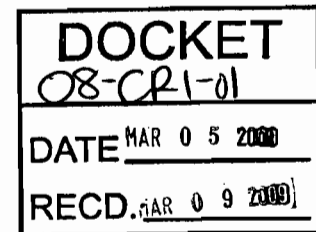
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March 5, 2009

VIA FEDERAL EXPRESS

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



Re: Complaint/Request for Investigation Regarding EnergySense/Masco, Docket  
Number 08-CRI-01

Dear Dockets Unit:

In accordance with the February 17, 2009 Efficiency Committee Decision and Order Regarding Respondents' Application to Take The Videotaped Deposition of Tom Hamilton; and Subpoena in the above-referenced matter, enclosed herewith is a copy of the transcript and video (in DVD form) of the deposition of Tom Hamilton taken on February 26, 2009.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven H. Frankel".

Steven H Frankel

Enclosures

cc: Brett Dickerson (via U.S. Mail w/o encl.)  
Dennis Beck (via U.S. Mail w/o encl.)

**DOCKET**

**08-CRI-01**

DATE MAR 05 2009

RECD. MAR 09 2009

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

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

9 Complainants, )  
10 vs. )

Docket No. 08-CRI-01

11 MASCO CORPORATION and )  
12 ENERGYSense, INC., )  
13 Respondents. )  
14 \_\_\_\_\_ )

15

16

17

18 DEPOSITION OF TOM HAMILTON, taken on  
19 behalf of Respondents, at 601 South Figueroa Street,  
20 Suite 2500, Los Angeles, California, commencing at 9:25  
21 a.m., Thursday, February 26, 2009, before Tracy Sato,  
22 Certified Shorthand Reporter, No. 13013.  
23  
24  
25

1 APPEARANCES OF COUNSEL:

2

3 For the Complainants:

4 GIANELLI & ASSOCIATES  
5 BY: BRETT L. DICKERSON, ESQ.  
6 1014 16th Street  
7 P.O. Box 3212  
8 Modesto, California 95353  
9 (209) 521-6260

7

For the Respondents:

8

9 SONNENSCHN NATH & ROSENTHAL  
10 BY: STEVEN H. FRANKEL, ESQ.  
11 525 Market Street  
12 26th Floor  
13 San Francisco, California 94105  
14 (415) 882-0300

12

13 ALSO PRESENT: SCOTT SLATER, Videographer

14 BILL LILLY,  
15 California Living & Energy

16 DAVE HEGARTY  
17 Duct Testers

17

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1 I N D E X

2

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9:25 A.M.

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5 THE VIDEOGRAPHER: Good morning. My name is Scott  
6 Slater, and I'm a videographer associated with Barkley  
7 Court Reporters located at 2040 Main Street, Suite 250  
8 in Irvine, California 92614.

9 The date is February 26, 2009. The time is  
10 9:25 a.m.

11 This deposition is taking place at 601 South  
12 Figueroa in Los Angeles, California, in the matter of  
13 California Living & Energy, et al. versus Masco  
14 Corporation, et al. Docket number 08-CRI-01.

15 This is the videotaped deposition of Tom  
16 Hamilton being taken on behalf of respondents.

17 Will counsels for the parties please identify  
18 themselves.

19 MR. FRANKEL: Steve Frankel on behalf the  
20 respondent Masco Corporation and EnergySense, Inc. My  
21 colleague Brett Crawford in our Washington DC office is  
22 listening in via teleconference.

23 MR. DICKERSON: Brett Dickerson on behalf of  
24 complainants, California Living & Energy and Duct  
25 Testers.

5

□

1 THE VIDEOGRAPHER: Thank you very much.

2 Will the court reporter please administer the  
3 oath.

4

5 (The oath was administered to the deponent,

6 TOM HAMILTON, as follows:)

7 THE REPORTER: Do you solemnly swear that the  
8 testimony you shall give in this deposition will be the  
9 truth, the whole truth, and nothing but the truth, so  
10 help you God?

11 THE WITNESS: Yes.

12

13 EXAMINATION

14 BY MR. FRANKEL:

15 Q. Good morning. Would you please state your  
16 name for the record.

17 A. Tom Hamilton.

18 Q. Good morning, Mr. Hamilton. As you heard  
19 through the introductions, we're here on the matter  
20 before the California Energy Commission concerning a  
21 complaint that was initiated by the complainants,  
22 California Living & Energy and Duct Testers, Inc. I  
23 represent EnergySense, Inc. and Masco Corporation.

24 And before we get started to the substance of  
25 the deposition, your testimony, I just want to go

6

□

1 through some preliminary matters, make sure that we're  
2 able to communicate effectively here this morning.

3 First, Mr. Hamilton, am I correct that you are  
4 appearing here this morning pursuant to a subpoena

5 issued by the Energy Commission?

6 A. Yes.

7 MR. FRANKEL: And if the court reporter will mark  
8 as the first exhibit, Exhibit Number 1, the subpoena,  
9 issued by the Efficiency Committee of the California  
10 Energy Commission.

11 (Respondents' Exhibit 1 was marked for  
12 identification by the Court Reporter and  
13 a copy is attached hereto.)

14 BY MR. FRANKEL:

15 Q. Let me show you what's been marked as Exhibit  
16 Number 1, Mr. Hamilton, and if you could identify that.

17 A. Yes, I received a copy of this.

18 Q. And that's a copy of the subpoena pursuant to  
19 which you're appearing here this morning?

20 A. Correct.

21 Q. Mr. Hamilton, have you provided deposition  
22 testimony in the past?

23 A. I don't think so.

24 Q. Okay.

25 A. I can't think of any.

1 Q. Let me just go through some basic ground  
2 rules, if you will, so that we are effectively  
3 communicating here.

4 I'm going to be asking you a series of  
5 questions here this morning. I assume that  
6 Mr. Dickerson, who's representing the complainants will

7 as well. If you don't understand my question, please  
8 tell me and I'll be happy to rephrase it. If you answer  
9 my question, I'm going to assume that you understood it.  
10 You understand that?  
11 A. Sure.  
12 Q. If at any point during the course of the  
13 proceedings here today you'd like to take a break, just  
14 let us know and we'll ask the court reporter to go off  
15 the record and we'll take a break.  
16 A. Okay.  
17 Q. If I ask you a question and you don't know the  
18 answer to the question, you should feel free to say  
19 that. But if you do have a recollection or an  
20 estimation, I'm entitled to that testimony.  
21 A. Okay.  
22 Q. But I don't want you to speculate or to guess.  
23 A. Right.  
24 Q. Is there any reason, Mr. Hamilton, that you  
25 could not provide true and accurate testimony here

8

□

1 today?  
2 A. No.  
3 Q. Would you please describe what you currently  
4 do for a living?  
5 A. I work for a large consulting firm that  
6 provides energy efficiency support to public and private  
7 sector companies.



8 Q. Okay. And what company is that?  
 9 A. It's called ICF International.  
 10 Q. And how long have you held that position?  
 11 A. About 13 months.  
 12 Q. And prior to joining ICF International, what  
 13 did you do?  
 14 A. I did work for a company called Quality Built  
 15 in San Diego, California.  
 16 Q. And what is Quality Built, what do they do?  
 17 A. They're in -- a quality assurance inspection  
 18 firm for new construction. Single family, multi-family  
 19 and nonresidential projects throughout the country.  
 20 Q. And how long did you work for Quality Built?  
 21 A. Just a year.  
 22 Q. And what did you do prior to joining Quality  
 23 Built?  
 24 A. I worked for -- well, it was a span for six  
 25 months, I left CHEERS, the California Home Energy

9

□

1 Efficiency Rating Services, in July of 2006. So between  
 2 July 2006 and January 2007, I was doing consulting work,  
 3 independent consulting work.

4 Q. And just so we have the time frames, from  
 5 January 2007 until what date did you work for Quality  
 6 Built?

7 A. It was basically January to January of 2007.  
 8 It was a year.

9 Q. To January of 2008?

10 A. Yeah, -'8, correct.  
11 Q. And from January 2008 to the present, you've  
12 been with ICF International?  
13 A. Correct, yes.  
14 Q. Doing energy consulting work?  
15 A. Yes.  
16 Q. And what did you do before you joined -- you  
17 went into your -- you did your consulting work between  
18 July 2006 and January 2007?  
19 A. Yes.  
20 Q. What did you do before that?  
21 A. I worked for CHEERS. Home energy rating --  
22 approved home energy rating system provider in  
23 California.  
24 Q. And how long had you been with CHEERS?  
25 A. Started there in October of 1996. Almost ten

10

□

1 years.  
2 Q. And what positions did you hold with CHEERS  
3 during the period of time from October '96 until July of  
4 2006?  
5 A. Executive director.  
6 Q. Throughout the whole period?  
7 A. Yes.  
8 Q. And apart from being executive director of  
9 CHEERS, did you sit on CHEERS' board or did you have any  
10 other positions?

11           A.    I wasn't -- I don't know the specific -- it  
12 would be in the CHEERS bylaws. I wasn't a board member.  
13 But I, you know, attended all the board meetings, set up  
14 the board meetings -- I forget. You would have to talk  
15 to CHEERS' counsel. I don't know exactly what the  
16 position was. I wasn't a board member.

17           Q.    Before we get into more detail about CHEERS, I  
18 wanted to just go back and go over your background  
19 before you started working with CHEERS in October of  
20 1996. Could you just describe what positions you've  
21 held before you joined CHEERS in October of '96?

22           A.    Yeah. My background prior to CHEERS was  
23 mortgage banking, banking industry. I worked for a  
24 political trade association immediately prior to CHEERS.  
25 We represented the banking industry in California.

11

□

1                   And prior to that I was in secondary marketing  
2 for mortgage banking companies, securities trading.

3           Q.    And roughly, what period of time was your work  
4 with these banking organizations?

5           A.    From 198- -- when I got out of college, '83, I  
6 think January of '83 until October of 1996.

7           Q.    And were you working for several different  
8 companies during that period or was it principally one  
9 or two?

10          A.    No. It was starting with Warehouse Mortgage  
11 out of college, then went to West Coast Savings Bank.  
12 Running just their single family, secondary marketing.

13 Then went to Far West Savings and ran single family,  
14 multi-family secondary marketing department.

15 And then from Far West Savings went to the  
16 Western League of Savings Institutions, the trade group.

17 Q. And just describe, if you could, your  
18 educational background since high school?

19 A. Degree in accounting finance from University  
20 of Pennsylvania at Slippery Rock. And an executive MBA  
21 that hasn't been completed with Pepperdine. And then  
22 various graduate studies with Cal Tech.

23 Q. Apart from those courses degrees, do you hold  
24 any other licenses or certifications other than, for  
25 example, a driver's license?

12

□

1 A. Yeah, I'm certified home energy rater. I'm a  
2 certified green building professional. And that's it,  
3 yeah.

4 Q. Let's turn to your employment with what  
5 you've -- what you've testified to as the California  
6 Home Energy Efficiency Rating Organization?

7 A. Services.

8 Q. Services Organization?

9 A. Yeah, CHEERS.

10 Q. And it's otherwise known as CHEERS, the  
11 acronym?

12 A. Yes.

13 Q. And when you started with CHEERS in 1996, can

14 you describe for me what the CHEERS organization was and  
15 what it was doing?

16 A. It was a small nonprofit that was focused  
17 primarily on existing housing on having home energy  
18 ratings perform for, yeah, existing -- residential  
19 existing housing.

20 Q. And when you say it was focused on energy  
21 rating for existing housing, could you be more specific  
22 as to what that -- what CHEERS did with respect to  
23 energy rating?

24 A. Sure. CHEERS trained and certified  
25 individuals to perform energy ratings using proprietary

13

□

1 software that CHEERS created to determine, in essence,  
2 an analogy a miles per gallon on home energy use.

3 Q. And at the time you began with CHEERS in 1996,  
4 how long had CHEERS been in operation at that point?

5 A. I want to say 1991. Or '92. Yeah. I think  
6 those approximate years. I don't know specifically.

7 Q. And at the time that you began with CHEERS in  
8 1996, had the California Energy Commission at that  
9 point, had it enacted any rules or regulations with  
10 respect to home energy efficiency standards for new home  
11 construction --

12 A. No.

13 Q. -- to your knowledge?

14 A. No.

15 Q. Did that happen at some point after you

16 joined --

17 A. Yes.

18 Q. -- CHEERS in 1996?

19 A. Yes.

20 Q. And do you recall approximately when that  
21 occurred?

22 A. 2001.

23 Q. And in 2001, do you recall what, if anything,  
24 happened with respect to energy efficiency ratings  
25 vis-a-vis the California Energy Commission?

14

□

1 A. There became a greater demand for them in new  
2 construction.

3 Q. And what -- what was your understanding as to  
4 the reason why there was greater demand for them in  
5 newer construction?

6 A. The California Energy Commission in  
7 promulgating the building energy efficiency standards  
8 included a provision for home builders to have what's  
9 called the alternative calculation method, basically  
10 tradeoffs between certain energy efficiency measures and  
11 having a measure verified by a HERS rater, as a third  
12 party.

13 Q. And in connection with what the California  
14 Energy Commission did in 2000, 2001, do you recall  
15 whether or not it established any sort of regulatory  
16 scheme by which companies or organizations could become

17 certified as providers to provide training and  
18 certification to those who would do the home energy  
19 efficiency testing on new home construction?

20 A. Yes.

21 Q. And did CHEERS seek to become such a provider?

22 A. Yes. CHEERS was the first provider approved.

23 Q. Okay. And do you recall when CHEERS was  
24 certified as being a provider under the California Home  
25 Energy Efficiency System?

15

□

1 A. I -- I want to say -- actually, it may have  
2 been earlier. It may have been 2000. Somewhere in  
3 there, '99, 2000.

4 Q. Let me --

5 A. Because -- yeah.

6 Q. I had just printed off, and you're free to  
7 look at this to see if this refreshes your recollection,  
8 from the CHEERS website, one of its pages on CHEERS  
9 is -- on the CHEERS website that I just printed out the  
10 other day.

11 And it says, "Founded in 1990, CHEERS was  
12 approved in 1999 by the California Home Energy  
13 Commission as the first home energy rating provider  
14 under the home energy rating system regulations."

15 A. Yeah, that sounds about right. Yeah.

16 Q. And in -- after CHEERS had been certified as a  
17 provider under the home energy efficiency rating system,  
18 what is it that CHEERS did in terms of certifying and

19 training raters to be able to test and verify home  
20 energy improvements on new home construction?

21 A. Part of the responsibility of the provider was  
22 to create training curriculum that ultimately the Energy  
23 Commission approved. CHEERS would go out and market the  
24 services, the training that CHEERS did, and try to  
25 engage individuals to become certified CHEERS raters.

16

□

1 Q. And during the period that you remained at  
2 CHEERS as its executive director, do you have an idea of  
3 approximately how many raters CHEERS had trained and  
4 certified?

5 A. Up until what time?

6 Q. Up until the time you left in July of 2006?

7 A. I want to say between 500 and 600 by -- the  
8 end of July 2006.

9 Q. And apart from CHEERS, to your knowledge were  
10 there other organizations that had been also certified  
11 as providers under the California Home Energy Rating  
12 System?

13 A. Yes.

14 Q. And who are the other organizations?

15 A. One was called CalCERTS. I'm not sure what  
16 the acronym is. It's C-A-L-C-E-R-T-S. And I believe  
17 the other one was California Building Performance  
18 Contractor's Association. I think they got approved  
19 when I was still at CHEERS, I'm not sure.



20 Q. And if you could, just -- if you could  
21 describe the process in sort of general terms that a  
22 builder would go through in terms of first, I guess,  
23 designing and building a home to meet California home  
24 energy efficiency standards and how a certified HERS  
25 rater fits into that whole process, if you could.

17

□

1 A. Sure. The builder wouldn't do it. The  
2 builder would design a home in compliance with Title 24  
3 of the building energy efficiency standards. They would  
4 design a home, and then would hire an individual to run  
5 an energy budget which would indicate if the home is  
6 compliant with the state energy standards or not.

7 If the software or the person creating the  
8 inputs for the software decided that it was worthwhile  
9 to have a HERS rater involved, then they would engage a  
10 HERS rater at that point at the very beginning of the  
11 process.

12 And once the home begins getting built, then  
13 the rater would go out and complete the verifications.

14 Q. And am I correct that under Title 24 of the  
15 Energy Code that there were, at least while you were at  
16 CHEERS, certain specific areas or components of new home  
17 construction that had to be tested and verified by a  
18 HERS rater in order to comply with the code?

19 A. Correct. But again it was still all optional  
20 on the -- it was up to the builder to decide there were  
21 no mandatory requirements to use a HERS rater.

22 Q. Okay. And did that change at any point during  
23 the time that you were at -- as executive director of  
24 CHEERS?

25 A. No.

18

□

1 Q. And in what -- what circumstances, if you  
2 could -- why, if you know, would a builder choose to  
3 engage a HERS rater or not engage a HERS rater for  
4 purposes of verifying that and testing that energy  
5 improvements and new home construction had, in fact,  
6 been installed or constructed?

7 A. It could be for their builders own desire for  
8 engaging a HERS rater for quality assurance of the  
9 measures. It could be a cost effectiveness where it may  
10 be because the standards were stringent and depending  
11 upon what climate zone of the 16 they're building in, it  
12 may be more cost effective for a builder to use a HERS  
13 rater than to use more -- instead of using high  
14 performance glazing or some other measure and that was  
15 the tradeoffs.

16 Q. And with respect to the testing and  
17 verification on new home construction, if a builder  
18 chose to have his construction tested and verified, were  
19 there certain tests that a HERS rater would then have to  
20 do?

21 A. Yes.

22 Q. Okay. And were those tests constant

23 throughout the period that you were at -- executive  
24 director at HERS or did they change over time?  
25 A. There's sort of two parts to your question.

19

□

1 Q. Okay.  
2 A. The first part is the, yes, more tests  
3 occurred and the test changed over time. And it was  
4 more in technical issue versus procedural. You still  
5 had to do a particular type of duct test air  
6 distribution test.  
7 As far as more tests, there were more tests  
8 added to the standards, more options I should say, added  
9 to the standards during the period that I was at CHEERS,  
10 yeah.  
11 Q. And am I correct that for the period that you  
12 were at CHEERS that the testing on verification that a  
13 HERS rater would be engaged to perform tests that were  
14 required under Title 24 at the time principally dealt  
15 with matters concerning the HVAC of the house?  
16 A. Yes.  
17 Q. And the duct work on the house?  
18 A. Yes.  
19 Q. And the energy efficiency of the building  
20 envelope?  
21 A. Yes.  
22 Q. And do you recall at some point while you were  
23 at CHEERS that another test or verification that a HERS  
24 rater had been engaged in on new home construction was

25 to verify that high quality insulation had been

20

□

1 installed in the home?

2 A. Yes.

3 Q. And do you recall the high quality insulation  
4 verification coming into effect approximately about  
5 October 1st, 2005?

6 MR. DICKERSON: I'll object to the extent that he's  
7 leading the witness by suggesting a date.

8 BY MR. FRANKEL:

9 Q. Do you have a recollection of high quality  
10 insulation being added as a test that a HERS rater would  
11 verify or test?

12 A. Yes.

13 Q. Okay. And do you recall when approximately  
14 that took place?

15 A. Yes. In October of 2005 when the California  
16 Energy Commission approved the 2005 Title 24 building  
17 energy efficiency standards.

18 Q. Now, could you describe for us, just briefly,  
19 if someone was going to seek to become a HERS certified  
20 rater, what type of training CHEERS provided during the  
21 period that you were executive director of CHEERS to be  
22 a certified rater?

23 MR. DICKERSON: Object that the question requests a  
24 narrative.

25

□

1 BY MR. FRANKEL:

2 Q. You're free to answer.

3 A. Okay. To the best of my recollection, it was  
4 a three-day course that included overview of the  
5 standards, and then testing requirements.

6 Q. And after completing this three-day course,  
7 what would a HERS rater seeking HERS certification from  
8 CHEERS have to do to be certified, would they have to  
9 take any tests?

10 A. At the end of the third day, they would have  
11 to take a test, yes. And upon passing that test, they  
12 would then be certified.

13 Q. And what, if any, measures or steps had CHEERS  
14 put in place to make sure, to the extent that it could,  
15 that HERS raters were doing proper testing and  
16 verification?

17 A. CHEERS at the time had a quality assurance  
18 plan in place.

19 Q. And could you describe for us just briefly  
20 what the quality assurance program entailed.

21 A. It was a CHEERS quality assurance person going  
22 out in the field and inspecting, doing follow-up  
23 inspections or testing of the rater. And I believe it  
24 was 1 percent of jobs that may actually still be in the  
25 standards actually.

□

1           Q.   And with respect to out of the quality  
2 assurance testing or verification or the actual testing  
3 or verification that HERS raters did on new home  
4 construction, did CHEERS maintain any sort of -- have  
5 sort of reporting requirements where it required those  
6 who were doing Title 24 testing as a CHEERS certified  
7 rater to do?

8           A.   Yes.

9           Q.   Could you just describe what that was?

10          A.   As part of the HERS provider requirements in  
11 Title 24 or in Title 20, I believe, a provider is to  
12 create a registry, an online database that tracks  
13 products and testing that are done on each home by each  
14 rater.

15          Q.   And let me show you what we'll mark as Exhibit  
16 Number 2, which is entitled Certificate of Field  
17 Verification and Diagnostic Testing CF-4R.

18                   If you could mark that as Exhibit Number 2.

19                   (Respondents' Exhibit 2 was marked for  
20 identification by the Court Reporter and  
21 a copy is attached hereto.)

22 BY MR. FRANKEL:

23          Q.   The court reporter's marked, Mr. Hamilton, if  
24 you could take a look at Exhibit Number 2, do you know  
25 what Exhibit Number 2 is?

□

1 A. Yes.

2 Q. And what is Exhibit Number 2?

3 A. It's a certificate of field verification  
4 diagnostic testing created by the California Energy  
5 Commission that a HERS rater would complete upon  
6 inspection or verification of measures in that  
7 particular home.

8 Q. Okay. And am I correct that this form,  
9 Exhibit Number 2, the certificate of field verification  
10 and diagnostic testing essentially lists the various  
11 field verifications or tests that a HERS rater would be  
12 asked to perform in accordance with the standards set  
13 forth in Title 24?

14 A. Yes.

15 Q. And is it the data from this form that the  
16 CHEERS certified rater would then input into the CHEERS  
17 registry?

18 A. Yes.

19 Q. Now, Mr. Hamilton, the reason -- one of the  
20 reasons that you're here today is because of the  
21 proceeding that has been initiated by the complainants  
22 here, California Living & Energy and Duct Testers before  
23 the California Energy Commission in which California  
24 Living & Energy and Duct Testers are alleging that  
25 EnergySense has violated the conflict of interest rules

1 under the California -- under Title 20 of the code.  
2 Because EnergySense, a Masco subsidiary has been testing  
3 and field verifying work done by other Masco  
4 subsidiaries in connection with new home construction.  
5 Are you familiar with those allegations?  
6 A. Yes.  
7 Q. Now, I want to direct your attention back to  
8 the period late 2005 early 2006.  
9 A. Uh-huh.  
10 Q. And ask if you recall in that rough time frame  
11 having any meetings or discussions with any  
12 representatives of Masco Corporation concerning the  
13 field verification and testing requirements and the  
14 requirements set forth in Title 20 of the code?  
15 MR. DICKERSON: Objection. Compound.  
16 BY MR. FRANKEL:  
17 Q. I'll rephrase the question. Do you have any  
18 recollection of talking to any representatives of Masco  
19 Corporation about field verification and testing work in  
20 late 2005, early 2006?  
21 A. Can you define Masco Corporation?  
22 Q. Are you familiar with Masco Corporation?  
23 A. Yes.  
24 Q. Okay. Are you familiar with the fact that  
25 Masco Corporation has a number of subsidiary companies?

25

□

1 A. Yes.



2 Q. Did you have discussions with either  
3 representatives of Masco or any of their subsidiaries?

4 A. Yes.

5 Q. Okay. And when do you recall approximately  
6 that meeting taking place?

7 A. I honestly don't know. I mean, there were a  
8 number of conversations throughout the years, but I  
9 don't know if it was in that time frame or not.

10 Q. Okay. Do you have any recollection of any  
11 representatives of Masco Corporation or any of Masco's  
12 subsidiaries talking to you about a business plan that  
13 they had presented about how they would establish a  
14 field verification and testing operation to do Title 24  
15 testing in California?

16 A. I would -- I wouldn't paraphrase it as  
17 business plan. As ideas, yes.

18 Q. As ideas?

19 A. Yes.

20 Q. Okay. And who do you recall that you met with  
21 when these ideas first were presented to you?

22 A. Dave Bell with Environments For Living. Brad  
23 Townsend. Those weren't all at the same time. Who was  
24 the other one? Rick Davenport. I know there was  
25 somebody else. I can't remember his name.

1 Q. And as best you can, when these ideas  
2 concerning field verification and testing for Masco or  
3 the subsidiaries that these individuals were

4 representing, can you describe as best you can what you  
5 remember them telling you about what they wanted to do,  
6 what their ideas were?

7 A. As far as I know at that time, EnergySense  
8 wasn't in California. I don't believe. They were  
9 talking about almost, I guess, consolidating, if you  
10 will, their HERS testing into one separate subsidiary of  
11 Masco Corporation, I believe.

12 Q. And did they ask for your views on whether  
13 that made sense?

14 A. Yes.

15 Q. Okay. And what did you tell them?

16 A. From a business standpoint, yes, that made  
17 sense, consolidating.

18 Q. Did they raise any issues with you with  
19 respect to the conflict of interest requirements or  
20 provisions in the Energy Code?

21 A. Yes.

22 Q. Okay. And just so -- I just want to make sure  
23 that we're on the same page here. You're familiar with  
24 the conflict of interest provisions in Title 20 of the  
25 California Code of Regulations?

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□

1 A. Yes.

2 Q. And what is your -- what is your understanding  
3 of what the conflict of interest rule provides?

4 A. That an employee of the installing company

5 cannot verify the work of the installer.

6 Q. And is the -- so the employee of the  
7 installing company can't verify the work. And is there  
8 also any restriction or prohibition on whether that  
9 rater, if you will, could advocate or recommend products  
10 for services?

11 A. Not in the standards that I'm aware of. There  
12 may be something in the CHEERS rater agreement.

13 Q. Well, let me -- I know it's been a while since  
14 you've been at CHEERS, so let me have marked as Exhibit  
15 3, and it's just the provisions of Title 20, sections  
16 1670 through 1675.

17 Let me have that marked and show it to you and  
18 see if we can proceed from there.

19 (Respondents' Exhibit 3 was marked for  
20 identification by the Court Reporter and  
21 a copy is attached hereto.)

22 MR. FRANKEL: Do you need a copy?

23 MR. DICKERSON: Yes, please. Thank you.

24 BY MR. FRANKEL:

25 Q. And I just wanted you to take a look at these

1 provisions first, and let me just ask you, Mr. Hamilton,  
2 if you've done that, I assume that you, in your capacity  
3 as executive director of CHEERS, were familiar with  
4 section 1670 through 1675 of Title 20, the regulations  
5 adopted by the California Energy Commission to establish  
6 the home energy rating system program in California?

7           A.    Yes, I'm familiar with it.

8           Q.    And just to direct your attention to the

9   conflict of interest provision on it, it requires -- to

10   look at a couple of different provisions, but if you

11   turn to the -- I believe the fifth page of the exhibit,

12   right above section 1674.

13          A.    Uh-huh.

14          Q.    And you see there's a provision, it says,

15   "Conflict of interest. One, provider shall be

16   independent entities from raters who provide field

17   verification and diagnostic testing; and two, that

18   providers and raters shall be independent entities from

19   the builder and from the subcontractor installer of

20   energy efficiency improvements, field verified or

21   diagnostically tested."

22          A.    Okay.

23          Q.    And you are familiar with those provisions

24   while you were executive director?

25          A.    Yes, I was familiar with them.

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1           Q.    And then I want to just direct your attention

2   to the first page of the exhibit under definitions.

3   where it defines both independent entity from the

4   provision we just looked at as well as financial

5   interest.

6                   And "Financial interest means an

7                   ownership interest, debt agreement or

277690.txt  
8 employer or employee" --  
9 "employer/employee relationship. And  
10 financial interest does not include  
11 ownership of less than 5 percent of  
12 the outstanding equity securities of  
13 a publicly traded corporation."  
14 Is that consistent with your recollection of  
15 the definition of financial interest from when you were  
16 executive director?  
17 A. Yes.  
18 Q. And also independent entity is defined in the  
19 next definition under section 1671:  
20 "Independent entity means having no  
21 financial interest in, and not  
22 advocating or recommending the use of  
23 any product or service as a means of  
24 gaining increased business with,  
25 firms or persons specified in

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1 1673(i)."  
2 And 1673(i) was the provision we looked at  
3 first.  
4 A. Okay.  
5 Q. And are those definitions consistent with your  
6 recollection of independent entity and financial  
7 interest --  
8 A. Yes.  
9 Q. -- while you were executive director?

10 A. Yes.

11 Q. Now, during your meeting with representatives  
12 of Masco Corporation or its subsidiaries, at least  
13 initially, did the subject of those conflict of interest  
14 provisions come up in your discussions?

15 MR. DICKERSON: Object in that it may  
16 mischaracterize his testimony. I'm not sure he said  
17 that he had meetings with them. I think they were just  
18 conversations at this point.

19 THE WITNESS: Yeah, I don't think it was sitting  
20 down and mapping anything out.

21 MR. DICKERSON: Just clarity.

22 BY MR. FRANKEL:

23 Q. Were these discussions in person or over the  
24 phone?

25 A. I would say both.

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1 Q. Okay. So you had meetings in person with  
2 representatives of Masco Corporation or its subsidiaries  
3 as well as some telephone conversations?

4 A. Yes.

5 Q. And during any of those discussions, did the  
6 subject of the conflict of interest provisions in Title  
7 20 come up?

8 A. Yes.

9 Q. Okay. And who raised those issues?

10 A. I did.

11 Q. And what did you say to the representatives of  
12 Masco or its subsidiaries that you were meeting with  
13 about the conflict of interest provisions?

14 A. That the firewall would have to be created  
15 that would stand up to the scrutiny of the CEC.

16 Q. And when you say "a firewall would have to be  
17 created," what did you mean by the term firewall?

18 A. So that there would not be any conflict of  
19 interest between a company that Masco owns that is  
20 selling paint that also would say, you know, use XYZ  
21 rater or rater company.

22 Q. And when you said a firewall, did any of the  
23 representatives of Masco Corporation or its subsidiaries  
24 that attended that meeting have any discussions or  
25 comment upon what would be -- what they thought would be

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1 an appropriate firewall?

2 A. Not while I was there. I know that they  
3 deferred to their legal counsel.

4 Q. Did they ever -- did anyone ever talk to you  
5 or raise with you the notion or idea of establishing a  
6 company as a separate wholly owned subsidiary of Masco  
7 Corporation to do the testing and verification work in  
8 California?

9 A. I would say yes. Yes.

10 Q. And did you -- did you believe that if Masco  
11 Corporation had established a separate corporation  
12 separate subsidiary though owned by Masco Corporation

13 that that would be one of the steps that would be  
14 necessary to create the firewall?

15 A. That would be a step in the process, yes.

16 Q. And did you -- did you talk with the Masco  
17 representatives about that the -- the separate  
18 subsidiary whether or not it would have to have separate  
19 employees who would just be employed by this separate  
20 subsidiary for rating purposes?

21 A. I don't think we ever got into that kind of  
22 detail.

23 Q. Did you have any discussion about the  
24 contracts that would be entered into for testing  
25 services?

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1 A. Yes. In the CEC standards there's a provision  
2 that allows for administrate -- the installer can  
3 administer the HERS verification or manage that process.

4 Q. And when you say in the Title 24 standards,  
5 are you referring to the manual or the 2005, I think  
6 it's called residential manual?

7 A. I'm not sure exactly where it's located.

8 MR. DICKERSON: Object that the witness -- deponent  
9 seems to be speculating at this point.

10 THE WITNESS: Yeah.

11 BY MR. FRANKEL:

12 Q. Let me have marked as the next exhibit in  
13 order and see if this can help you, Mr. Hamilton. And



14 this is -- we'll have this marked as Exhibit Number 4,  
15 and I will tell you that this is just an excerpt from  
16 the 2005 Building Energy Efficiency Standards Commission  
17 certified manual entitled Residential Compliance Manual,  
18 and it's from the 2005 manual. And it simply includes  
19 the introduction, table of contents, and runs through  
20 Chapter 2 of that manual, and does not include all the  
21 other chapters. I just wanted to save some trees.  
22 And if we could have that marked Exhibit 4.  
23 (Respondents' Exhibit 4 was marked for  
24 identification by the Court Reporter and  
25 a copy is attached hereto.)

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1 MR. DICKERSON: Did you make copies of that one,  
2 Steve?  
3 MR. FRANKEL: I think I got -- I've got copies for  
4 you. At least one.  
5 MR. DICKERSON: Okay. Thank you, sir.  
6 BY MR. FRANKEL:  
7 Q. And I don't mean for you to have to read  
8 through this whole manual, but I'm going to direct your  
9 attention to one particular provision. And these pages,  
10 if you turn to page 2-16 of the document, it's near the  
11 end. And there is a question and then an answer. It's  
12 example 2-7.  
13 It says, the question is:  
14 "I heard there are conflict of  
15 interest requirements that HERS

16                   raters must abide by when doing field  
17                   verification and diagnostic testing,  
18                   what are these requirements?"  
19               And then there's a discussion, and then if you  
20 go on to the second paragraph, there is a reference to  
21 a, quote, "three-party contract," on the second  
22 paragraph about five lines from the bottom.  
23       A.    Okay.  
24       Q.    Is that the third -- three-party contract that  
25 you were referring to in your earlier testimony?

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1       A.    Yes.  
2       Q.    Now, did you have discussions with the Masco  
3 Corporation or Masco subsidiary's representatives about  
4 a Masco installing subsidiary entering into a contract  
5 with a builder for installation services, for testing  
6 services, and then through subcontracts having that  
7 testing work then done by this new separate subsidiary  
8 that Masco was thinking about setting up to do the  
9 testing and field verification?  
10      A.    Yes.  
11      Q.    And did you have discussions that what Masco  
12 or the Masco subsidiaries were contemplating was  
13 entering -- for them entering into separate contracts  
14 with EnergySense pursuant to which EnergySense would do  
15 the testing work that a Masco subsidiary had procured  
16 from a particular builder or subcontract?

17 A. Again, I don't think we got into that much  
18 detail specifically about that.

19 Q. Okay. What do you recall about the contract  
20 situation that you referred to before?

21 A. Oh, that Masco is again as part of the process  
22 is to implement using a third party or the three-party  
23 contract approach that is in the energy efficiency and  
24 standards.

25 Q. And do you recall what else, if anything, you

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1 discussed with the Masco Corporation, Masco subsidiary  
2 representatives that you met with concerning the  
3 establishment of California EnergySense subsidiary?

4 A. We didn't get into the specifics about what  
5 the subsidiary would be called, but that much, if not  
6 all, of this should be reviewed by the Energy  
7 Commission.

8 Q. Did you express any views to the Masco  
9 representatives or to the representatives of the Masco  
10 subsidiaries as to whether as the executive director of  
11 CHEERS you had any views as to whether this met the  
12 conflict -- satisfied the conflict of interest  
13 provisions or did not?

14 A. Yes.

15 Q. What was your view?

16 A. That if they had a stringent firewall and  
17 began the process and got the review of the Energy  
18 Commission, that yes, that seemed that would be

19 acceptable and adhere to the spirit of law.

20 Q. Okay. Now with respect to the conflict of  
21 interest provisions, Mr. Hamilton, am I correct that it  
22 was your understanding that the conflict of interest  
23 provisions applied to the individual rater as opposed to  
24 a corporation or organization?

25 A. According to the rater.

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1 Q. Okay.

2 A. CHEERS's responsibility is the rater or the  
3 HERS provider, yes.

4 Q. Okay. So when you certify someone as a HERS  
5 rater, you're certifying an individual?

6 A. Correct.

7 Q. Not a company?

8 A. Correct.

9 Q. Okay. And just in terms of -- to make sure  
10 that I understand your views and your testimony here, if  
11 an energy -- let's just taken EnergySense, for example.

12 A. Okay.

13 Q. If EnergySense has an employee who is  
14 certified as a HERS rater through CHEERS --

15 A. Uh-huh.

16 Q. -- who then would test or field verify work  
17 done by another Masco subsidiary, and let's assume that  
18 it's inspecting high-quality insulation. would that  
19 individual rater be, in your view, in compliance with or

20 not in compliance with the conflict of interest  
21 provisions of Title 20?

22 A. Well, first, I don't know who or what Masco  
23 subsidiaries there are. But I'm not sure.

24 Q. Well, let's -- let's assume that the  
25 EnergySense employee is employed solely by EnergySense,

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1 has no other employment, has no ownership interest in  
2 the Masco subsidiary whose work he's testing or  
3 inspecting, has no debt agreement with them, has no  
4 employee or employer relationship with them, and has --  
5 and is not advocating or recommending their products or  
6 services.

7 Based on your understanding of the conflict of  
8 interest provision, would that HERS rater be in  
9 compliance or not?

10 MR. DICKERSON: Objection. Asking the deponent to  
11 draw a legal conclusion.

12 THE WITNESS: Yeah. Like I said, I don't know  
13 under that scenario and not knowing what subsidiaries  
14 are involved or the corporate structure, and if they had  
15 implemented the third-party or three-party contract,  
16 yes, I would think that that rater would be in  
17 compliance.

18 BY MR. FRANKEL:

19 Q. And do I have it right, at least from your  
20 discussions with the Masco representatives on the  
21 representatives of Masco subsidiaries, that you believe

22 that if they established the appropriate contractual  
 23 relationship and had established this company as a  
 24 separate subsidiary, that in your view as the executive  
 25 director of CHEERS that subsidiary and raters who were

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1 certified by CHEERS could test and field verify work  
 2 done by other Masco subsidiaries without contravening  
 3 the conflict of interest requirements?

4 MR. DICKERSON: Objection. Asking for him to draw  
 5 a legal conclusion.

6 Further objection. It's an improper  
 7 hypothetical posed to a nonexpert witness.

8 BY MR. FRANKEL:

9 Q. You can answer.

10 A. There's just too many assumptions in that that  
 11 I was not -- that I'm not aware of or privy to as far as  
 12 corporate structure, knowledge of ownership of the  
 13 installing companies.

14 Again, the intent -- my nonlegal intent of the  
 15 definition was that if I'm a builder or an installer of  
 16 windows, I cannot have my employee verify that window.  
 17 And that's the -- I guess the intent of the regulations  
 18 and that's carried through or borne throughout the  
 19 standards of separation between installers and raters  
 20 and providers.

21 Q. But in your view, if a corporation that had  
 22 installing subsidiaries wanted to do -- wanted to have

23 an operation that was able to test and field verify the  
24 work that that installing subsidiary did, if a separate  
25 corporation was established albeit owned by the parent

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1 by both the installing companies and -- well, let me  
2 strike that. Too many assumptions in my question.  
3 In your view, if a company owned a installing  
4 subsidiary and wanted to do field testing and  
5 verification work, if it established a separate  
6 corporation and made sure that those employees of the  
7 separate corporation were independent of and didn't have  
8 an employer/employee relationship with the installing  
9 company and had other protections that they put in  
10 place, do you believe that that would satisfy your view  
11 of these firewall requirements?

12 A. Yes.

13 MR. DICKERSON: Objection. Vague. Ambiguous.  
14 Unanswerable. I believe the word was put in various  
15 other protections.

16 Could you read it back to me please?

17 (Whereupon, the record was read back by  
18 the Court Reporter as follows:

19 "Q In your view, if a company owned a  
20 installing subsidiary and wanted to do  
21 field testing and verification work, if  
22 it established a separate corporation and  
23 made sure that those employees of the  
24 separate corporation were independent of

25 and didn't have an employer/employee

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1 relationship with the installing company  
2 and had other protections that they put  
3 in place, do you believe that that would  
4 satisfy your view of these firewall  
5 requirements?")

6 MR. DICKERSON: How can you answer a question when  
7 it says "other protections in place"? That's an  
8 ill-defined term that could run the gamut of what they  
9 could do.

10 MR. FRANKEL: You're free to make your objection.

11 MR. DICKERSON: Okay.

12 BY MR. FRANKEL:

13 Q. Can you answer that question?

14 A. Yes. Again, if -- with the other elements in  
15 place.

16 Q. Okay. And who other elements or what other  
17 protections did you believe needed to be put in place?

18 A. The three-party agreements.

19 Q. Anything else?

20 A. And that they had talked to the Energy  
21 Commission about the structure. I never approved them  
22 doing it. I gave them certain guidance, I accepted what  
23 was being done based upon the information I was  
24 provided.

25 Q. And do you know whether -- and how many



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1 meetings or discussions did you have with  
2 representatives of Masco Corporation or its subsidiaries  
3 about this structure that they were envisioning?

4 A. Two or three, maybe.

5 Q. And were you -- did you talk to the same  
6 individuals you previously identified, were they  
7 participants in all the discussions?

8 A. Not all of them. But I would say of the names  
9 I had given at least one or two of those were involved.  
10 And I believe I talked once to Masco's legal counsel.

11 Q. And do you recall who that was?

12 A. Ken?

13 Q. Ken Kohl?

14 A. That sounds right.

15 Q. Do you recall -- do you have any recollection  
16 of that discussion?

17 A. Yeah, I think they had -- Masco had submitted  
18 information to the Energy Commission for review and the  
19 Energy Commission responded with request for additional  
20 documentation. And this was a -- I never met in person  
21 with Ken that I know of. I think it was just a  
22 conference call. And it was -- he had questions on some  
23 of the documentation that the Energy Commission was  
24 seeking.

25 Q. And do you recall what, if anything, you said

1 to Mr. Kohl or he said to you during that telephone  
2 conversation?

3 A. I want to say I did bring up the three-party  
4 agreement. I think I did talk to him about the -- I  
5 want to say -- Exhibit Number 3, the Title 20 standards  
6 to review those. That's about it. I don't think it was  
7 a long conversation.

8 Q. Following the discussions that you had with  
9 representatives of Masco and Masco Corporation  
10 concerning their ideas about how to establish a field  
11 testing and verification company in California, do you  
12 have any knowledge as to whether or not Masco  
13 Corporation, its subsidiaries, or EnergySense actually  
14 went to the California Energy Commission with respect to  
15 their business plans?

16 A. I think they did. And I think that's what  
17 prompted the letter from the Energy Commission.

18 Q. And do you have any recollection as you sit  
19 here today as to in what time frame roughly you had your  
20 discussions with EnergySense or -- I mean, with Masco or  
21 Masco Corporation about its plans for establishing this  
22 testing and field verification company in California or  
23 when at least, to your knowledge they would have gone to  
24 the Energy Commission concerning it?

25 A. I want to say it was 2005. But the time frame

1 was quite large because of -- I think the -- Masco  
2 responded and then didn't get a response from the  
3 commission for, I think, several months. If not four or  
4 five. I honestly don't remember a specific month or --  
5 but I want to say it's within that, because of the new  
6 standards.

7 Q. New standards relating to?

8 A. The 2005 building energy efficiency standards.

9 Q. And those were the standards that added  
10 high-quality installation to the standards?

11 A. Correct.

12 Q. And did anyone from Masco or any of the Masco  
13 subsidiaries that you met with mention that the addition  
14 of high-quality insulation installation verification and  
15 testing was one of the reasons that they were interested  
16 in setting up this separate subsidiary to do testing in  
17 California?

18 A. No. I don't think it was based on specific  
19 measures. It was more based on a business model of  
20 general business. Because I believe -- yeah, that's why  
21 I think they had a couple different companies going on  
22 in California at that time. So...

23 Q. Now, do you know in your capacity as executive  
24 director or whether you acquired any information since  
25 you left as to whether Masco Corporation did, in fact,

1 set up a separate company to do field testing and  
2 verification work in California under Title 24?  
3 A. Since I had left CHEERS, yes.  
4 Q. What did you learn?  
5 A. That Masco had acquired a company in Texas  
6 called EnergySense. And I believe they then set up a  
7 similar company in California, and since then have  
8 merged the two EnergySense companies into one now I  
9 believe.  
10 Q. Okay. And where did you acquire that  
11 information from?  
12 A. I think it was more as -- that I'm a member of  
13 a -- a board member of a -- that that conversation came  
14 up.  
15 Q. So you don't -- was that information you  
16 acquired from Masco or from somebody else?  
17 A. Oh, somebody else. It was just like -- I  
18 think it was almost in a trade publication, in fact.  
19 Q. So you don't know whether the Masco company  
20 that -- or the EnergySense company that was acquired  
21 down in Texas actually, in fact, merged with an  
22 EnergySense company in California?  
23 A. No. No. It was just -- I had heard  
24 basically.  
25 Q. Now, while you were executive director of

1 CHEERS, did -- did you ever have occasion to get reports

2 on the quality of any field testing work that either  
3 EnergySense had done under Title 24 or its raters or  
4 whether raters that Masco may have had employed in its  
5 various subsidiaries prior to the establishment of  
6 EnergySense, did you get any reports on their work?

7 MR. DICKERSON: I'll object that the question is  
8 compound. I'll object that it mischaracterizes his  
9 testimony. I believe that he testified that EnergySense  
10 did not come into being for purpose of the Title 24  
11 inspections until after he left CHEERS.

12 THE WITNESS: I believe that's the case, yes. I'm  
13 not sure on the specifics. But yes, through the CHEERS  
14 database, we -- one of the requirements of the raters is  
15 to submit data to the HERS provider on tests completed.

16 BY MR. FRANKEL:

17 Q. Okay. And do you know whether while you were  
18 executive director you had occasion to review any  
19 quality assurance reports on any work done by  
20 EnergySense raters?

21 A. I may have, but I don't remember. CHEERS  
22 would have those records.

23 Q. And do you have any recollection as to whether  
24 there were any issues or concerns with respect to the  
25 quality of any rating or inspection work under Title 24

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1 that had been done by any HERS certified CHEERS raters  
2 that were employed by EnergySense?

3 A. No.

4 Q. Do you recall receiving any reports with  
5 respect to work done by any HERS raters certified by  
6 CHEERS that had worked for any Masco related company?  
7 A. No. We just get the data. Yeah.  
8 Q. And no issue with respect to performance or  
9 quality by any HERS raters employed by any other Masco  
10 related companies came to your attention?  
11 A. No. Not that I'm aware of, no.  
12 Q. Now, during your time as executive director of  
13 CHEERS, did there come a time when you received any  
14 inquiries from the staff at the California Energy  
15 Commission concerning claims of conflict of interest by  
16 Masco EnergySense or any Masco related company?  
17 A. Yes.  
18 Q. Okay. And do you recall approximately when  
19 you received the first such inquiry?  
20 A. 2001. 2002, maybe.  
21 Q. What do you recall happening at that point?  
22 A. I think was just an e-mail asking -- it was a  
23 one- or two-sentence e-mail, I believe. I mean, I  
24 really -- again, CHEERS has all the e-mailing  
25 documentation of when I was executive director. I don't

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1 have anything since I've left CHEERS.  
2 Q. And do you have any recollection as to what  
3 the issue that was raised in 2001, 2002 related to?  
4 A. I really don't. I would be speculating what

5 the issue was.

6 Q. But this was an issue that -- whenever it was,  
7 was not -- since you didn't have these discussions  
8 concerning the establishment of this firewall company  
9 until 2005, 2006, did the discussion that you had back  
10 in 2001, 2002 relate to a different issue?

11 A. No. I think it still had to do with conflict  
12 of interest. But it was -- oh, it was that a company  
13 that was owned by Masco was doing inspections. Yeah, I  
14 think that's what started the concern. That parentally  
15 Masco owns a lot of insulation companies and one of the  
16 raters worked for the insulation company. I think. But  
17 it turned out that he never did work for the insulation  
18 company. He worked for somebody else but an affiliated  
19 company. And that that rater was doing inspections,  
20 doing duct testing on a project where a Masco subsidiary  
21 was doing the insulation job, I think. I think that's  
22 what the issue was.

23 Q. Okay. And do you know what, if anything,  
24 happened to that matter?

25 A. I think that began the discussions of -- with

1 Masco saying, you know, there needs to be something put  
2 in place to ensure that you don't have this conflict of  
3 interest or the financial interest issue come up.

4 Q. Okay. And who do you recall talking to about  
5 this matter that came up in 2001, 2002?

6 A. I think it was an e-mail from Tav Cummins at

7 the Energy Commission. And at Masco, it may have been  
8 Dave Bell or Rick Davenport.

9 Q. And what do you recall -- did you have  
10 discussions with Mr. Bell or Mr. Davenport back in 2001,  
11 2002?

12 A. No, I simply forwarded the e-mail and said  
13 what's going on here.

14 Q. Okay. And did they respond to you?

15 A. I think that's where they responded to with  
16 beginning the process of saying that, you know, in  
17 essence, have to nip it in the bud and begin discussions  
18 with the CEC or creating that structure or putting  
19 enough firewalls in place, I should say.

20 Q. And did you have any discussion with  
21 Mr. Cummins about it at that time?

22 A. No. I don't think I've ever had any -- I  
23 think I responded to his e-mail, but again, I don't  
24 remember what the -- what the response was or is.

25 Q. And apart from that exchange in 2001, 2002,

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□

1 had you had any subsequent conversations or  
2 communications with anyone at the California Energy  
3 Commission about this conflict of interest issue insofar  
4 as it related to any Masco Corporation or Masco related  
5 company?

6 A. I don't believe so, no.

7 Q. Have you ever had any discussions with any



8 representatives of California Living & Energy or Duct  
9 Testers about the allegation that Masco Corporation  
10 and/or EnergySense are allegedly violating the conflict  
11 of interest rules as they exist in Title 20?

12 A. I believe I did, yes.

13 Q. Okay. And who do you remember speaking with?

14 A. Bill Lilly of California Living & Energy.

15 Q. And do you recall when you spoke with  
16 Mr. Lilly?

17 A. Again, I think it was possibly around this  
18 time frame, probably in the early 2000s. 2001, maybe.  
19 Around there.

20 Q. And do you have a recollection was it a  
21 telephone conversation or face-to-face conversation?

22 A. It was either by phone or e-mail.

23 Q. Okay. What do you recall about it?

24 A. That he had raised the concern about this  
25 conflict of interest.

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1 Q. And was it -- which -- what conflict of  
2 interest did he raise back in 2001, 2002?

3 A. Of a rater working for the insulation company  
4 doing rating on a job where a Masco company is involved.

5 Q. And do you recall what, if anything, you said  
6 to Mr. Lilly over the phone or by e-mail in response to  
7 his inquiry?

8 A. I may have referred to the Energy Commission.

9 Q. Okay.

10 A. And -- yeah.

11 Q. Other than the exchange either by e-mail or  
12 telephone that you had with Mr. Lilly back in the 2001,  
13 2002 time frame, have you had any discussions with him  
14 since concerning the claimed or alleged conflict of  
15 interest?

16 A. I may have. But I -- nothing that strikes me.  
17 Since 2000 -- that time period --

18 Q. Yes.

19 A. Until today?

20 Q. Yes.

21 A. Maybe once or twice. But I don't -- and that  
22 was possibly face to face at a conference or something  
23 like that. Just in passing.

24 Q. Do you have any recollection of those  
25 discussions?

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□

1 A. No.

2 Q. Have you ever had any conversations with  
3 anyone else at California Living & Energy other than  
4 Mr. Lilly concerning this matter?

5 A. No.

6 Q. What about Mr. Hegarty of Duct Testers, have  
7 you ever spoken with him about any matters concerning  
8 Masco or any Masco related company?

9 A. Yes.

10 Q. And when do you recall speaking with

11 Mr. Lilly -- I mean, Mr. Hegarty?

12 A. A week ago Monday.

13 Q. Okay. What happened a week ago Monday?

14 A. We were at a conference and just talked about  
15 what's going on, and basically, you know, see you on the  
16 23rd. Or see you today. Whatever today's date is.

17 Q. What did Mr. Hegarty say to you about this  
18 matter, if anything?

19 A. Just like to get it resolved and move on.

20 Q. Did you have any discussion of the substance  
21 of the issue of the conflict of interest issue?

22 A. No. No. Just that a lot of this was catching  
23 me off guard because I haven't been involved.

24 Q. Do you have any recollection -- let me just --  
25 I'll stop there.

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1 Apart from the discussion that you had with  
2 Mr. Hegarty a week ago at a conference that you were at,  
3 had you ever spoken to him about any matters concerning  
4 Masco, EnergySense, or any other Masco related company  
5 prior to that discussion that you had at a conference  
6 last week?

7 A. Not that I'm aware of. Yeah, I can't --  
8 nothing where that was the main subject of the  
9 conversation. I -- you know, I mean, probably last  
10 Monday was the most that we had talked about concerning  
11 this matter. But...

12 Q. And I take it that you don't have any

13 recollection of having conversations with anyone else  
14 associated with Duct Testers, Mr. Hegarty's company,  
15 other than the conversation that you had with him  
16 approximately a week ago?

17 A. Correct.

18 Q. And I just want to make sure, apart from the  
19 conversation that you had, e-mail that you received from  
20 Mr. Cummins back in 2001, 2002, you have any  
21 recollection of any other discussions or meetings with  
22 anyone at the Energy Commission concerning Masco, any  
23 Masco related company or EnergySense since 2001, 2002,  
24 insofar as it related to conflict of interest issues?

25 A. I may have in 2004 or -'5. But I couldn't --

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1 again, CHEERS could have the e-mail.

2 Q. Do you have a recollection of that e-mail?

3 A. I think it may have been a conversation with  
4 Bill Pennington, the manager of the building energy  
5 standards for California Energy Commission.

6 Again, maybe just almost in passing kind of.  
7 But nothing to where that was on an agenda or the center  
8 of the conversation.

9 MR. FRANKEL: Why don't we take a short break,  
10 figure out how much I have left to do.

11 Let's go off the record.

12 THE VIDEOGRAPHER: Going off the record. The time  
13 is 10:49 a.m.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We are back on the record. The  
16 time is 11:00 o'clock a.m.

17 BY MR. FRANKEL:

18 Q. Mr. Hamilton, I don't have very many more  
19 questions. I just want to go over a few other things.

20 During the time that you were executive  
21 director of CHEERS, could you be as specific as you can  
22 as to what measures CHEERS had established to check on  
23 the quality of testing and verification work done under  
24 Title 24 of raters that it had certified, what were the  
25 specific measures that were put in place?

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1 A. There was to be a documentation review of  
2 documents submitted to CHEERS. There was to be actual  
3 field verification of the testing by the raters. And I  
4 believe those are the two main issues.

5 Q. And with respect to raters who are initially  
6 trained and certified as HERS raters and certified by  
7 CHEERS, is there any continuing education requirements  
8 or recertification requirements that a rater has to  
9 comply with?

10 A. Yes. Every year a rater must renew or  
11 recertify with CHEERS by signing a new rater agreement.  
12 I don't think we had implemented continuing education  
13 credits at that time. I don't believe so. So it was a  
14 matter of just renewing their contract or agreement  
15 between CHEERS and the rater.

16 Q. And do you know are there continuing education  
17 requirements today or those still haven't been  
18 implemented?

19 A. That I don't know.

20 Q. And in your current capacity as a consultant  
21 with your firm, do you have any continuing duties or  
22 responsibilities with respect to CHEERS?

23 A. No.

24 Q. Now, I want to go back just briefly to your  
25 discussions with the Masco representatives or Masco

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1 Corporation or its subsidiaries when they were first  
2 approaching -- well, first, I want to go back to the  
3 initial discussion or matter where you said you got an  
4 e-mail from Mr. Cummins at the CEC about a conflict of  
5 interest issue that was raised in 2001, 2002 time frame.

6 A. Okay.

7 Q. And you said that that related to a Masco  
8 employee testing or field verifying work that was done  
9 by another Masco company or do you have any recollection  
10 of what it involved?

11 A. I believe it pertained to a specific Masco  
12 individual, but I think it was questioning who they  
13 worked for. I don't think it was specifically -- I  
14 don't think the e-mail was that detailed as far as what  
15 you had laid out, that it was this installing company,  
16 this rating company. I think it was does this

17 individual work for Masco, because of this.

18 Q. And did you -- do you recall doing any  
19 investigation as to what the answer to that question  
20 was?

21 A. Yeah, providing information based upon the  
22 rater agreement.

23 Q. Okay.

24 A. That he worked for -- I can't remember the  
25 name of the company at that time.

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□

1 Q. And what do you recall the issue being  
2 concerning this particular rater, as best you can  
3 describe it?

4 A. That it was a Masco company subcontractor  
5 doing work on a project unrelated to the HERS  
6 verification measures. But it was the same project or  
7 same home and the rater came out or it was doing  
8 inspections for -- for that home, in compliance with  
9 Title 24.

10 Q. And when you say it was unrelated to the work  
11 that the other Masco company was doing, what do you mean  
12 by that?

13 A. I think it was a Masco subcontractor that was  
14 either doing the insulation and the rater was doing duct  
15 testing for Title 24 compliance.

16 Q. Okay. And if the rater was doing duct testing  
17 for Title 24 compliance, is it your understanding that  
18 the rater would or would not be testing or verifying the

19 insulation in that example?

20 A. No, he would not. It wasn't required.

21 Q. Okay. And to your knowledge, at least while  
22 you were at the Energy Commission -- or at CHEERS, I'm  
23 sorry, to your knowledge, did Masco or any Masco related  
24 company install ducts or do duct work in California?

25 A. No, I don't think they ever have.

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□

1 Q. Okay. Now, other than the discussion or  
2 communications that you had with Mr. Lilly, the  
3 encounter or exchange that you had with Mr. Hegarty  
4 about a week ago, and the couple of discussions or  
5 communications that had you with the California Energy  
6 Commission or representatives there, have you spoken  
7 with anyone else about the conflict of interest issues  
8 as they related to Masco, EnergySense, or any Masco  
9 related company?

10 A. About a month or two months ago, I spoke with  
11 Ivor.

12 Q. Ivor Samsom?

13 A. Yes.

14 Q. One of my partners?

15 A. Yes, yes.

16 Q. And other than the conversation that you had  
17 with him, you had -- you've spoken with no one else  
18 about this matter?

19 A. No. No.



20 Q. And to make sure that I've -- as I understand  
21 covered your -- my understanding of your testimony, I  
22 just want to go back, the discussions or communications  
23 that you had with Masco representatives of either Masco  
24 Corporation or its subsidiaries in the 2005, 2006  
25 period, those -- was that first time that you had any

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1 discussions with any Masco representatives about  
2 establishing a testing -- a separate testing and field  
3 verification company in California?

4 A. Yes.

5 Q. And am I correct that the upshot of your  
6 discussions with the Masco representatives in 2005 and  
7 2006 is that they should -- that if they established a  
8 firewall, a separate company, and implemented this  
9 three-party contract and went to the Energy Commission,  
10 that you believed at least in your role as executive  
11 director of CHEERS that that would not contravene as far  
12 as you believed the conflict of interest requirements?

13 A. Correct.

14 MR. FRANKEL: I have nothing further.

15 //

16 EXAMINATION

17 BY MR. DICKERSON:

18 Q. Okay. Thank you.

19 Mr. Hamilton, Brett Dickerson. We met  
20 earlier.

21 A. Yes.

22 Q. Was it the role of you or anyone else with  
23 CHEERS to approve or disapprove a plan to avoid conflict  
24 of interest provisions in the code?

25 A. No.

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□

1 Q. Is that ultimately the responsibility of the  
2 California Energy Commission to make that call?

3 MR. FRANKEL: Objection. Calls for a legal  
4 conclusion.

5 BY MR. DICKERSON:

6 Q. To your understanding.

7 A. Yes.

8 Q. When you had the conversations with the  
9 representatives from Masco in 2005 and 2006, who  
10 initiated those contacts?

11 A. I would say Masco did.

12 Q. Masco did.

13 At the time they initiated those conversations  
14 with you, did they mention any concerns they may have  
15 regarding potential conflicts of interest in their  
16 present operations at that time?

17 A. Not in the present operations.

18 Q. Did they have concerns about potential  
19 conflicts of interest in previous operations that  
20 they've been engaged in?

21 A. No.

22 Q. Did they tell you why they wanted to speak to

23 you or -- let me rephrase that.  
24 Did they tell you why they wanted to establish  
25 an entity for the purpose of avoiding the conflict of

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1 interest provisions?  
2 MR. FRANKEL: Objection. Argumentative.  
3 Mischaracterizes the witness's testimony.  
4 BY MR. DICKERSON:  
5 Q. You can answer.  
6 A. Oh. Because of the growing market business,  
7 development business opportunity.  
8 Q. Did you have any discussions with anyone else  
9 at CHEERS regarding these discussions that you were  
10 having with Masco?  
11 A. I may have talked to our quality assurance  
12 person.  
13 Q. What was that person's name, do you recall?  
14 A. Doug Beaman.  
15 Q. Do you recall what Mr. Beaman said?  
16 A. No, I don't.  
17 Q. Do you recall if CHEERS did any independent  
18 investigations into complaints regarding potential  
19 conflicts of interest violations by Masco or Masco  
20 related entities during the time frames we've been  
21 discussing today?  
22 A. I don't believe so.  
23 MR. DICKERSON: You're going 1, 2 and 3, aren't  
24 you?

25 MR. FRANKEL: Uh-huh.

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□

1 MR. DICKERSON: You want to go Complainant's A, B,  
2 C?

3 MR. FRANKEL: That's fine. Whatever you'd like.

4 MR. DICKERSON: Okay. If we could mark this  
5 Complainant's Exhibit A, please.

6 (Complainant's Exhibit A was marked for  
7 identification by the Court Reporter and  
8 a copy is attached hereto.)

9 BY MR. DICKERSON:

10 Q. If you could take a look at that document,  
11 please, I'd appreciate it. And I'll be directing your  
12 attention to certain provisions there as we go through.

13 A. Okay.

14 Q. I'd like to direct your attention, if I could,  
15 please, to page 2, line 8 through line 13. I'll read  
16 that out loud, if you could follow that along with me,  
17 I'd appreciate it.

18 And I'm going to say what has been marked as  
19 complainant's Exhibit A is the respondent's application  
20 for subpoena to take the videotaped deposition of Tom  
21 Hamilton.

22 Going back to page 2, line 8, it says:

23 "During his tenure as CHEERS  
24 executive director, Mr. Hamilton  
25 discussed with Masco in some detail

□

1           the conflict of interest provisions  
2           in the Title 24 regulations and their  
3           application to EnergySense. As a  
4           result, the discussions with and  
5           advice provided by Mr. Hamilton,  
6           Masco and EnergySense created an  
7           organizational structure that enabled  
8           EnergySense to operate independently  
9           from Masco subsidiaries that  
10          performed HERS related installations  
11          consistent with the CEC's  
12          regulations."

13                Do you have any knowledge as to whether that  
14 statement is true?

15        A.    I think that in line 9 in some detail, I think  
16 it's -- I'm not sure what detail would reflect. I think  
17 it's specific to the conflict of interest provisions was  
18 the items we had outlined in the prior document. And  
19 that was basically the extent of it.

20        Q.    Okay. Are you aware whether or not  
21 EnergySense -- I'm sorry -- that Masco and EnergySense  
22 created an organizational structure that enabled  
23 EnergySense to operate independently from the Masco  
24 subsidiaries, that they were able to do that on the  
25 basis of the advice that you gave them?

1 A. That would be prudent.

2 Q. Because ultimately it is the CEC's decision as  
3 to whether or not they can operate independently,  
4 correct?

5 MR. FRANKEL: Objection. Calls for a legal  
6 conclusion. No foundation.

7 BY MR. DICKERSON:

8 Q. You can answer.

9 A. I think that needs to be addressed by the  
10 Energy Commission legal counsel.

11 Q. Okay. Thank you.

12 If I could direct your attention to page 4  
13 please, beginning on line 8. I'll read it out loud, if  
14 you could read along, please.

15 "Essentially, Mr. Hamilton, in early  
16 2006 reviewed EnergySense's current  
17 organizational structure and gave it  
18 his, quote, seal of approval,  
19 unquote, because EnergySense had no  
20 financial interest in and does not  
21 advocate or recommend the use of any  
22 product or service as a means of  
23 gaining increased business with any  
24 other Masco subsidiary, thereby  
25 satisfying the definition of a,

1                   quote, independent entity, unquote,  
2                   under Title 20, section 1671 of the  
3                   California Code of Regulations."

4                   At any point in time did you provide Masco or  
5 any other Masco related entity with your seal of  
6 approval?

7           A.    I'm not sure what that is.

8           Q.    Were you able to glean any meaning, potential  
9 meaning, of seal of approval from what's been read to  
10 you? Had you approved their organizational structure?

11          A.    No.

12          Q.    At any point in time when you were having your  
13 discussions with Masco regarding this issue, did Masco  
14 provide you with any information regarding potential  
15 shared directors between EnergySense and any other Masco  
16 entity?

17          A.    No.

18          Q.    Did they provide you any information regarding  
19 shared officers or employees between EnergySense and any  
20 other Masco related entity?

21          A.    No.

22          Q.    Did they provide you any information regarding  
23 common stockholders between Masco and any other Masco  
24 related entity?

25          A.    No.

1 Q. Did they provide you any financial statements  
2 concerning Masco or any other Masco related entity?

3 A. No.

4 Q. Did they give you any discussion as to how  
5 funds may have flowed among the various Masco related  
6 entities?

7 A. No.

8 Q. Were you able to -- were you provided any  
9 information regarding common e-mail addresses that may  
10 have existed on Masco related entities?

11 A. No.

12 Q. Given any information regarding financial  
13 statements?

14 A. No.

15 Q. Let's enter this as Plaintiff's -- I'm sorry,  
16 Complainant's Exhibit B.

17 (Complainant's Exhibit B was marked for  
18 identification by the Court Reporter and  
19 a copy is attached hereto.)

20 BY MR. DICKERSON:

21 Q. What I'm showing you that's been marked as  
22 Complainant's Exhibit B, is a letter dated May 15, 2007.  
23 It is addressed to Mr. David R. Bell, the president of  
24 EnergySense.

25 If you look to the final page, which bears a

1 Bates stamp number 124. It is signed. At least it



2 shows a signature or signature block for William Staack,  
3 senior staff counsel.

4 Have you seen this document before, sir?

5 A. No.

6 Q. Okay. You will notice on the date is May 15,  
7 2007?

8 A. Uh-huh.

9 Q. Which according to your previous testimony is  
10 roughly ten months subsequent to your alleged  
11 conversations with personnel from the California Energy  
12 Commission regarding these potential conflicts?

13 A. Uh-huh. About a year after I left CHEERS.

14 Q. About a year after you left CHEERS.

15 If I could direct your attention to page 2 in  
16 this letter that is written to EnergySense by senior  
17 staff counsel for the CEC, second paragraph from the  
18 bottom, beginning with "without supplementary  
19 documentation." You see that?

20 A. Yes.

21 Q. I'll read along, if you could -- read it out  
22 loud, if you could read along with me.

23 "Without supplementary documentation  
24 provided to the contrary, it appears  
25 that a violation of the conflict of

1 interest provision under the HERS  
2 regulation could exist between  
3 EnergySense and various entities of  
Page 64

4 the Masco Corporation structure  
5 because of the following  
6 presumptions." Then goes on to list  
7 various presumptions that has led  
8 them to believe that there is likely  
9 conflict of interest.  
10 MR. FRANKEL: Objection. Misstates the letter.  
11 MR. DICKERSON: Okay.  
12 BY MR. DICKERSON:  
13 Q. would the opinion regarding a conflict of  
14 interest of the CEC strump any -- trump any opinions  
15 that would be issued by anyone from CHEERS?  
16 A. Yes.  
17 MR. FRANKEL: Objection. Calls for speculation.  
18 No foundation. Misstates what the Exhibit A actually  
19 states. It's argumentative.  
20 You can answer.  
21 THE WITNESS: Yes.  
22 BY MR. DICKERSON:  
23 Q. It would?  
24 A. Yes.  
25 Q. Okay. I'd like to enter as Complainant's

1 Exhibit C. Please hand that over. Thank you.  
2 what's been marked as Complainant's Exhibit C  
3 is I'm representing to you a page from Masco  
4 Corporation's annual report from 2004.

5 (Complainant's Exhibit C was marked for  
6 identification by the Court Reporter and  
7 a copy is attached hereto.)

8 BY MR. DICKERSON:

9 Q. Have you ever seen this document before?

10 A. I may have. This is part of their  
11 Environments For Living program.

12 Q. Okay. You're familiar with the Environments  
13 For Living program?

14 A. Yes.

15 Q. There are seven pillars for the Environments  
16 For Living program. At least that's what they say. Can  
17 you see those?

18 A. Yes.

19 Q. Could you look at those seven pillars of  
20 Environments For Living program over, please?

21 A. Uh-huh.

22 Q. Now, to your understanding, the Environments  
23 For Living program is a program that Masco has that sort  
24 of creates a package of various environmentally friendly  
25 provisions they can put in the home?

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□

1 A. Yes.

2 Q. As you look at these, are any of these pillars  
3 that would loan themselves to Title 24 HERS testing in  
4 the State of California?

5 A. Number 1, tight construction.

6 Q. Okay.

7 A. That are HERS verified?  
8 Q. Uh-huh.  
9 A. Oh, number 3. In the '05 standards, I think  
10 it's just those two, I believe.  
11 Q. HVAC equipment?  
12 A. Right-sized HVAC equipment. I don't think --  
13 can I refer to an exhibit?  
14 Q. Sure. Which exhibit are you referring to,  
15 sir?  
16 A. Number 2. Exhibit 2.  
17 Q. Thank you.  
18 If I may follow up, direct your attention to  
19 the first page where it starts -- middle of the page  
20 where they have the -- the various entities, it talks  
21 about duct system and/or HVAC system changeout.  
22 A. Yes.  
23 Q. Could HVAC conceivably be subject to HERS  
24 testing?  
25 MR. FRANKEL: Objection. Calls for speculation.

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□

1 THE WITNESS: For existing housing, not new  
2 construction.  
3 BY MR. DICKERSON:  
4 Q. Okay. Is there any HVAC used for HERS testing  
5 or HVAC for new construction under that that new section  
6 that calls for new construction or discusses new  
7 construction?

8 A. Right. Duct testing. But I do not believe  
9 that's a requirement for right-size and equipment. Also  
10 this is Environments For Living, so it doesn't apply to  
11 Title 24.

12 Q. Okay. Are there things that could be done  
13 under Environments For Living that could lend themselves  
14 to Title 24 testing?

15 MR. FRANKEL: Objection. No foundation. Calls for  
16 speculation.

17 THE WITNESS: Yes. If they were included in the  
18 modeling for compliance.

19 BY MR. DICKERSON:

20 Q. Would window installation ever result in Title  
21 24 HERS testing?

22 MR. FRANKEL: Objection. No foundation. Calls for  
23 speculation.

24 THE WITNESS: For -- not for Title 24, no.

25

1 BY MR. DICKERSON:

2 Q. No U rating or anything like that?

3 A. Not for Title 24.

4 Q. Do you recall who was on the board of  
5 directors for CHEERS in 2005, 2006?

6 A. Yes.

7 Q. Who were they?

8 A. It was Lance Delora with SoCal Gas. Charles  
9 Sagrestrom from PG&E. David Goldstein from NRDC. Paul

10 Jacobs, he was an independent appraiser. Doug Beaman.  
11 Gene Rodriguez from Southern California Edison. I'm  
12 trying to think. I may be missing somebody. But...

13 Q. That's okay for now. If you happen to  
14 remember just feel free to bring it up.

15 Okay. Did you have any discussions with any  
16 of these members of the board of directors at CHEERS at  
17 times you were engaged in the discussions with Masco  
18 regarding conflict of interest and organizational  
19 structure to avoid the conflict of interest provisions?

20 A. No.

21 Q. Did you have any other conversations with the  
22 commission regarding the complaints or allegations that  
23 have been raised against Masco regarding the alleged  
24 conflict of interest other than what you've already  
25 discussed today?

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□

1 A. No.

2 MR. DICKERSON: Let's take a quick break.

3 MR. FRANKEL: Okay.

4 THE VIDEOGRAPHER: Going off the record. The time  
5 is 11:28 a.m. on February 26, 2009.

6 This is the end of Video Number 1 of the  
7 continuing deposition of Mr. Tom Hamilton.

8 (Recess taken)

9 THE VIDEOGRAPHER: We are on the record. The time  
10 is 11:36 a.m.

11 This is the beginning of Video Number 2 of the  
12 deposition of Tom Hamilton.

13 BY MR. DICKERSON:

14 Q. Correct me if I'm mischaracterizing your  
15 previous testimony, but I think you talked about the  
16 need for Masco, if they wanted to put this  
17 organizational structure together, to avoid conflicts  
18 they needed to do third-party agreements?

19 A. Yes.

20 Q. Did you ever see a copy of a third-party  
21 agreement that Masco produced?

22 A. I'm not positive. I may have. I just don't  
23 know as I sit here.

24 Q. Okay. No definitive recollection of ever  
25 seeing one?

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1 A. Correct. There would be one in the file at  
2 CHEERS.

3 Q. Okay. You also talked earlier about some  
4 manuals that were created by CHEERS regarding the  
5 testing programs and how to train.

6 A. Uh-huh.

7 Q. Who wrote those manuals?

8 A. For the most part Doug Beaman. And I believe  
9 we had one other subcontractor, and ultimately, those  
10 are approved by the California Energy Commission.

11 Q. So it's the CEC who has the final approval of  
12 that?

13 A. Correct, yes.

14 Q. Do you recall the name of the other contractor  
15 that helped you with that, I'm sorry, that helped  
16 Mr. Beaman with that task?

17 A. God, who did help with that? No, I don't.

18 Q. Do you recall how the drafting of those  
19 manuals was funded?

20 A. Through CHEERS' budget.

21 Q. And how does CHEERS get their money?

22 A. From training classes, they charge raters to  
23 attend and then when the rater completes an inspection,  
24 slash, verification, CHEERS charged the rater a  
25 processing fee.

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□

1 Q. That would be the verifications that were  
2 Exhibit 2 that were sent in?

3 A. Yeah. Yes.

4 Q. Very quickly, can you tell me how -- let me  
5 rephrase.

6 Can you explain to me what EnergySense is, not  
7 EnergySense -- what's the term we're looking for? It's  
8 a PG&E program?

9 MR. FRANKEL: Are you referring to Energy Star?

10 MR. DICKERSON: Energy Star. That's it. Too many  
11 Energys here.

12 THE WITNESS: It's a nationally branded program by  
13 the Environmental Protection Agency that is -- the brand



14 is applied to appliances, lighting, new homes and  
15 existing homes.

16 BY MR. DICKERSON:

17 Q. Okay. Does that involve some kind of rebates  
18 coming back, et cetera?

19 A. From the utilities.

20 Q. From the utility.

21 A. Yes.

22 Q. Does any of the work that is done to qualify  
23 for Energy Star ratings involve potential inspection  
24 under Title 24 or HERS?

25 MR. FRANKEL: Objection. Calls for speculation.

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1 Based upon your knowledge as having been involved with  
2 CHEERS.

3 THE WITNESS: Yes, there could be Title 24 measures  
4 that are used for compliance under the Energy Star  
5 program.

6 MR. DICKERSON: That's it.

7 //

8 EXAMINATION

9 BY MR. FRANKEL:

10 Q. I just have a few follow-up questions,  
11 Mr. Hamilton, and I want to direct your attention back  
12 to the time period where you were having discussions in  
13 2005, 2006 with representatives of Masco and the Masco  
14 subsidiaries concerning the establishment of a separate  
15 company to do testing and field verification under Title

16 24.

17           During those discussions, Mr. Hamilton, was it  
18 your understanding that Masco Corporation and its  
19 subsidiaries were trying to do everything they could in  
20 terms of moving forward with this business plan in order  
21 to comply with Title 20 and Title 24?

22           MR. DICKERSON: Objection. Speculation.

23           THE WITNESS: Yes. Yes.

24 BY MR. FRANKEL:

25           Q. And did you believe that they were going

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1 through this process and discussing their business plans  
2 with you because you got the impression they were trying  
3 to avoid conflicts of interest?

4           MR. DICKERSON: Same objection. Speculation.

5           THE WITNESS: They were -- yes. They were trying  
6 to avoid the conflict of interest.

7 BY MR. FRANKEL:

8           Q. They wanted to, in essence, operate in a  
9 manner so that they complied with the conflict of  
10 interest provision, that's one of the points they were  
11 discussing with you?

12           A. Correct.

13           Q. And based on your discussions with them in  
14 terms of the plans that they had articulated, you  
15 believed that they would be in compliance if they set up  
16 the separate company, put in the firewalls, had the

17 third-party contracts, and went to the Energy Commission  
18 to obtain approval, correct?

19 A. Yes. Not to necessarily obtain approval from  
20 the Energy Commission.

21 Q. But to advise the Energy Commission about what  
22 they intended to do?

23 A. Of their intentions, yes.

24 Q. And with respect to field testing and  
25 verification work, am I correct that under Title 20,

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1 it's a provider like CHEERS that really has, for lack of  
2 a better word, the authority or jurisdiction over the  
3 raters who it certifies?

4 A. Yes.

5 Q. And the raters who CHEERS certifies after  
6 going through the training and testing program those  
7 raters in entering into agreements with CHEERS to be a  
8 CHEERS certified rater agreed to abide by the conflict  
9 of interest requirements in Title 20, do they not?

10 A. Correct. Yes.

11 Q. And part of the job that CHEERS has is to make  
12 sure that the testing results in verifications that HERS  
13 raters perform are objective, correct?

14 A. Yes.

15 Q. Independent?

16 A. Yes.

17 Q. And that they're done in as accurate a fashion  
18 as can be performed, correct?

19 A. Correct.

20 Q. And that they're done by raters who do not  
21 have conflicts of interest as defined in Title 20?

22 A. Correct.

23 Q. So in your -- in being approached by Masco and  
24 the Masco subsidiaries about their business plan for  
25 setting up this separate field testing and verification

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1 company, it didn't surprise you that Masco were seeking  
2 out your guidance in how this plan should come into  
3 fruition?

4 A. No, I thought it was prudent.

5 MR. FRANKEL: I have nothing further.

6 //

7 EXAMINATION

8 BY MR. DICKERSON:

9 Q. One more.

10 Did you consider it prudent -- would you have  
11 considered it prudent for Masco to go forward with this  
12 plan without checking with the CEC first?

13 A. Yes.

14 Q. Without checking with the CEC first?

15 A. Oh, I'm sorry. Without checking, no.

16 Q. At any point in time did you review any  
17 proposed business model for Masco and EnergySense and  
18 tell Masco and/or EnergySense your good to go, this is  
19 fine, from a conflict of interest standpoint?

20           A.    No.  
21           MR. DICKERSON:  Okay.  I don't have anything else.  
22           MR. FRANKEL:  Nothing further.  
23           THE VIDEOGRAPHER:  Going off the record.  The time  
24 is 11:45 a.m. on February 26, 2009.  
25           This is the end of Video Number 2, and

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1 concludes of deposition of Tom Hamilton.  
2           (Whereupon, the proceedings concluded at  
3           the hour of 11:45 a.m.)  
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2           I have read the foregoing deposition  
3 transcript and by signing hereafter, approve same.  
4 Dated \_\_\_\_\_.

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(Signature of Deponent)

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1                                    DEPOSITION OFFICER'S CERTIFICATE  
2  
3    STATE OF CALIFORNIA            )  
4    COUNTY OF LOS ANGELES        )    S.s.  
5  
6                                    I, Tracy Sato, hereby certify:  
7                                    I am a duly qualified Certified Shorthand  
8    Reporter, in the State of California, holder of  
9    Certificate Number 13013 issued by the Court Reporters  
10   Board of California and which is in full force and  
11   effect. (Bus. & Prof. S 8016.)  
12                                    I am not financially interested in this action  
13   and am not a relative or employee of any attorney of the  
14   parties, or of any of the parties. (Civ. Proc. S  
15   2025(k)(1).)  
16                                    I am authorized to administer oaths or  
17   affirmations pursuant to California Code of Civil  
18   Procedure, Section 2093(b) and prior to being examined,  
19   the deponent was first duly sworn by me. (Civ. Proc. S  
20   2025(r)(1).)  
21                                    I am the deposition officer that  
22   stenographically recorded the testimony in the foregoing  
23   deposition and the foregoing transcript is a true record  
24   of the testimony given. (Civ. Proc. S 2025(r)(1).)

□

1           I have not and shall not offer or provide any  
2 services or products to any party's attorney or third  
3 party who is financing all or part of the action without  
4 first offering same to all parties or their attorneys  
5 attending the deposition and making same available at  
6 the same time to all parties or their attorneys. (Civ.  
7 Proc. S 2025(k)(2).)

8           I shall not provide any service or product  
9 consisting of the deposition officer's notations or  
10 comments regarding the demeanor of any witness,  
11 attorney, or party present at the deposition to any  
12 party or any party's attorney or third party who is  
13 financing all or part of the action, nor shall I collect  
14 any personal identifying information about the witness  
15 as a service or product to be provided to any party or  
16 third party who is financing all or part of the action.  
17 (Civ. Proc. S 2025(k)(3).)

18

19 Dated: \_\_\_\_\_, 2009

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22 \_\_\_\_\_

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