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14 Attorneys for Respondents
15 MASCO CORPORATION and ENERGYSSENSE, INC.

16
17 **STATE OF CALIFORNIA**
18
19 **ENERGY RESOURCES CONSERVATION**
20
21 **AND DEVELOPMENT COMMISSION**

22 CALIFORNIA LIVING & ENERGY (a
23 division of William Lilly & Associates, Inc.)
24 and DUCT TESTERS, INC.,

Docket Number 08-CRI-01

25 Complainants,

Affidavit of David Bell

26 vs.

27 MASCO CORPORATION and
28 ENERGYSSENSE, INC.,
Respondents.

Being first duly sworn under oath, David Bell deposes and states as follows:

1. I am the President of EnergySense, Inc., a position I have held since
EnergySense was incorporated in August 2006. I have personal knowledge of all facts
set forth below.

2. I am employed by Masco Home Services, Inc. as the Manager of the
Environments For Living® program. My office is located at 2339 Beville Road, Daytona
Beach, FL 32119-8720. I have never been an employee of EnergySense, Inc.

DOCKET

08-CRI-01

DATE MAR 25 2009

RECD. MAR 25 2009

1 3. The email from Tav Cummins of the Commission staff dated October 16,
2 2006 (Bates No. 0000075 at Tab 18 in the Docket binder prepared by the Commission
3 staff for the March 17, 2009 hearing; a copy of which is attached hereto as Exhibit 1)
4 referenced by the Complainants at the March 17, 2009 hearing erroneously identifies me
5 as "National Sales Manager with MASCO" [sic]. I am not and have never been National
6 Sales Manager with or for MASCO or Masco Corporation.

7 4. The biographical summary prepared by the AHC Group for a conference
8 in which I participated in 2007 (a copy of which was produced by the Complainants as
9 page GA 000213 and is attached hereto as Exhibit 2) erroneously identifies me as the
10 Vice President of Marketing for Masco Contractor Services.

11 5. I am not and have never been the Vice President of Marketing for Masco
12 Contractor Services. Moreover, I have never occupied any corporate officer or director
13 position in Masco Contractor Services, nor have I ever been a corporate officer or
14 director of Masco Corporation or any Masco-related entity other than EnergySense, Inc.
15 I also have never been a shareholder of any Masco related entity other than Masco
16 Corporation.

17 6. None of the corporate officers and directors of EnergySense, Inc. are
18 employees of EnergySense, Inc.

19 7. The letter dated May 15, 2007, addressed to me from William Staack of
20 the Commission staff erroneously states my address as 14655 Northwest Freeway, Suite
21 102, Houston, Texas. I have never worked at that address, and I have never had any
22 involvement in the management or operations of Williams Consolidated I, Ltd., which
23 occupies that address and operates under the assumed name of "Energy Sense Systems."

24 8. Williams Consolidated I, Ltd. is a separate business from EnergySense,
25 Inc., and Williams Consolidated I, Ltd. has no involvement in the management or
26 operations of EnergySense, Inc.

27 9. On January 12, 2006, I participated in a meeting with Tom Hamilton, the
28 executive director of the California Home Energy Efficiency Service ("CHEERS"), to

1 discuss the potential impact of HERS testing of high quality installation of insulation on
2 HERS raters employed by Masco installation subsidiaries. In that meeting, Hamilton
3 expressed support for a proposal to establish a separate Masco subsidiary that would
4 employ HERS raters who could perform Title 24 HERS field verification and diagnostic
5 testing of insulation installed by separate Masco installation subsidiaries. At that time,
6 Hamilton stated his belief that such an approach would comply with the HERS conflict of
7 interest regulations, given (a) the regulations' application to individual raters rather than
8 to their employers and (b) the additional organizational, procedural and contractual
9 protections proposed by Masco to ensure the independence of the HERS raters the new
10 subsidiary would employ.

11 10. A true and correct copy of the letter I wrote to the California Energy
12 Commission staff on October 25, 2006, responding to a request for information from the
13 Commission staff, is attached hereto as Exhibit 3.

14 11. The June 5, 2008 letter from Mr. Bill Lilly, President, California Living &
15 Energy, to Dennis Beck, Esq. of the Commission (Bates Nos. 0000001 to 0000004 at Tab
16 1 in the Docket binder prepared by the Commission staff for the March 17, 2009 hearing)
17 falsely attributes statements to me. At no time have I ever "verbally disclosed to several
18 parties [my] belief that, because MASCO [sic] is a large corporation with numerous sister
19 companies and subsidiaries, MASCO et al can disregard CEC standards." (Bates No.
20 0000002) Mr. Lilly's allegation is a gross, bad-faith distortion of my genuine belief that
21 the corporate structure and operating parameters established for EnergySense, Inc. and its
22 HERS raters comply fully with the Commission's HERS regulations.

23 12. Neither Masco Corporation nor any Masco-related entity has entered into
24 a national contract with Pulte Homes that requires the use of HERS raters employed by
25 EnergySense or any other Masco-related company for Title 24 field verification and
26 diagnostic testing purposes.

1 I swear or affirm, under penalty of perjury under the laws of the State of the California,
2 that all facts set forth herein are true and correct.

3 FURTHER AFFIANT SAYETH NOT.

4 Executed this 25th day of March, 2009.

5
6 

7 David Bell

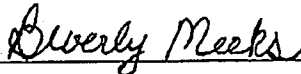
8 State of Florida))

9 County of Volusia)

10
11 On March 25, 2009, before me, BEVERLY MEEKS, Notary Public, personally appeared David
12 Bell, who provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
13 subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
14 his/her/their authorized capacity/ies, and that by his/her/their signature(s) on the instrument the person(s), or
15 the entry upon behalf of which the person(s) executed the instrument.

16 I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true
17 and correct.

18 WITNESS my hand and official seal.

19  (Seal)

20 Notary Public



EXHIBIT 1

Bill Lilly

From: Bill Lilly [bill.lilly@califliving.com]
Sent: Monday, October 16, 2006 3:40 PM
To: Bill Pennington; doug@dougbeaman.com; bill.lilly@califliving.com; Tav Commins
Cc: Rich Giometti; Larry; Jeff; Dick; Bill H
Subject: RE: MASCO Conflict of Interest

Tav

I really appreciate you getting back to me. Let me see, I'm having a little trouble understanding... MASCO's (possessive) subs can verify work completed by another MASCO sub... mmmm I think I get it, there goes the concept of "independent" HERS rater.

Tav, sorry for the poor effort of frustrated satire.

Thanks
Bill

-----Original Message-----

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]
Sent: Monday, October 16, 2006 1:41 PM
To: bill.lilly@califliving.com; doug@dougbeaman.com; Bill Pennington
Subject: MASCO Conflict of Interest

I Just talked to Dave Bell, National Sales Manager with MASCO. He will be sending me the letter this week from MASCO explaining how MASCO's subs can verify work completed by another MASCO sub.

Tav

12-8-06 Tuesday
I left message.

0000075

EXHIBIT 2

The Emerging Issues workshops provide an opportunity for today's leaders to address those growing business strategy and changing global economy concerns on the near horizon, providing a glimpse into the future from the leading experts in their fields. As the executive who redesigned GM's public policy functions, and as a former chairman of Keystone and other key emerging issues forums, Denny shows in this ongoing workshop the value of framing a response with tact and force.

Masco Contractor Services

Dave Bell,
Vice President of Marketing

www.masco-csc.com

- TOPIC:
"The Building Alliance between GE and Masco"

Masco Corporation is a global provider of branded supplies and services for residential new construction and home improvement. Some years they build over a million new homes in North America. This presentation explains the seven key building science principles of their new environments for the living program with GE. In addition, Dave Bell, their EFL National Sales Manager, gives us a glimpse of their new and emerging ecoimagination screens and dashboards that will allow home users to monitor the environmental footprint and behaviors of their homes.

Introduction by Rachel McCracken of the AHC Group



SUNY College of Environmental Science and Forestry

Neil Murphy,
President

www.esf.edu

- TOPIC:
"The Biorefinery in New York: Woody Biomass into Commercial Ethanol"

We all know we are rapidly confronting limited energy diversification options in our carbon constrained world. This presentation by the President of the SUNY college of Environmental Science and Forestry explores new hopeful options in bio-refining, including a commercial ethanol plant in NY that may give us a glimpse of things to come. Within this case study expect to see the mounting tensions between bio-mass for energy and bio-mass for critical food supplies in our new century.

Introduction by Jeff Sama, Director of Environmental Permits and Pollution Prevention at New York Department of Environmental Conservation



New Leaf Paper

Michael Pete,
Vice President

www.newleafpaper.com/

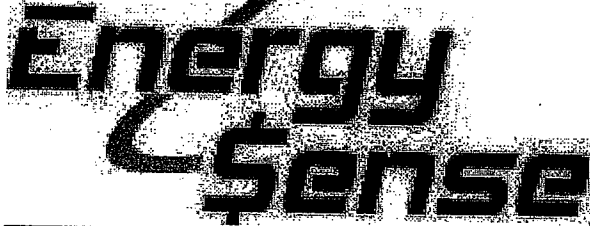
- TOPIC:
"Business Ethics in the Paper Manufacturing Industry"

A firm that started in 2000 and is now a \$19.5 million firm, New Leaf Paper is launching Sakura 100, a new product representing a significant advance over the recycled coated sheets of other U.S. paper companies, which contain only 10%-30% post-consumer waste. New Leaf Sakura 100 is designated Ancient Forest Friendly™ and is manufactured with Green-e® certified



GA 000213

EXHIBIT 3



Dear Tav:

I write in response to your recent question about EnergySense, Inc.

EnergySense is a subsidiary of Masco Corporation and is in the process of being registered to do business in California. Masco is a multi-billion dollar public company and a leading provider of home improvement and building products and of installation services for insulation and other products. EnergySense was formed to provide inspection, testing, and other consulting services to builders, general contractors and subcontractors in residential and commercial construction. In California, these services include arranging for and administering energy ratings and energy efficiency field verification and diagnostic testing for purposes of EnergyStar, California's Title 24, and other energy efficiency programs offered by builders and others (such as the *Environments For Living*® program offered by another Masco subsidiary). EnergySense provides these services using raters who are appropriately trained and qualified and, for purposes of Title 24 testing and inspection, who are certified by and registered with CHEERS.

A sister Masco Company of EnergySense is Masco Services Group Corp. ("MSG"). MSG is a leading services company that, through its subsidiaries, installs insulation and a variety of other building products from over 300 locations across the United States, including in California. In California, these installation services are provided through its subsidiaries, Builder Services Group, Inc. and American National Services, Inc. and their respective subsidiaries. These various subsidiaries are sister companies of EnergySense. From time to time, EnergySense raters will inspect and/or test for purposes of Title 24 compliance installation work performed by a California branch of one of these sister companies (a "Branch"). In these instances, EnergySense would provide its services under, depending on the builder's preference, a contract with the builder; a three-party contract between the builder, the Branch and itself; or a contract with the Branch, which, in turn, would contract with the builder to provide installation services and independent inspection and/or testing services. The last situation is very much like a California Energy Commission (CEC) approved three-party contract, but allows the builder greater convenience and efficiency. EnergySense recently entered into a master subcontract agreement with Builder Services Group, Inc. and American National Services, Inc. for those instances where the builder selects the last alternative.

Regardless of which option is selected, we believe that EnergySense can inspect and/or test installation work performed by a Branch for purposes of Title 24 consistent with the requirements set forth in 20 CCR 1673(i). According to Section 1673(i), the rater (the person performing the inspection or test) must be an "independent entit[y]" from the builder and subcontractor installer of the energy efficient improvement being tested or inspected. In Section 1671, an "independent entity" is defined as "having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with," the builder or subcontract installer of the energy efficient improvement being tested or inspected. Section 1671 also defines "financial interest" as "an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation."

Under these definitions, EnergySense's raters are independent entities from any Branch. They have no financial interest in any Branch – that is, they have no ownership interest in or debt agreement with, and are not employees of, any Branch. Moreover, they do not advocate or recommend to any builder that it use any Branch as a means by which to gain more business with that branch. Indeed, EnergySense's subcontract agreements with Builder Services Group, Inc. and American National Services, Inc. expressly preclude EnergySense and its raters from doing so. Similarly, under these definitions, EnergySense, as opposed to its raters, is an independent entity from any Branch. EnergySense, like MSG, is a direct subsidiary of Masco and, as such, has no financial interest in either MSG or any Branch.

More importantly, EnergySense is confident that its raters can, and will, inspect the work of a Branch just as they would for the work of any other installer – objectively and independently. EnergySense expects its raters to conduct their tests and inspections honestly, independently, and in compliance with all applicable regulations and RESNET guidelines regardless of who the customer or installer may be. Indeed, the raters must do so in order to maintain their HERS certification according to agreements the rater signs with the HERS provider. In addition, EnergySense operates from locations separate from the Branches, and the branch managers of the EnergySense locations, who have direct oversight responsibility for the daily activities and operations of the raters, do not have any direct oversight or management responsibility for any Branch. Similarly, the managers of the Branches do not have any oversight or management responsibility for any EnergySense rater.

The independence and objectivity required and expected of EnergySense's raters in these situations is further demonstrated by the master subcontracts between EnergySense and Builder Services Group, Inc. and American National Services, Inc. These contracts provide that: EnergySense use only trained, qualified, experienced and certified raters who are registered with a HERS provider approved by the California Energy Commission. As extra oversight, CHEERS regularly monitors the test and inspection results of EnergySense's raters and, therefore, is in a position to identify and address any concern with the independence of an EnergySense rater in these situations. In this regard, earlier

this year when he was the Executive Director of CHEERS, Tom Hamilton expressed his view that EnergySense's structure and operation as outlined above would be consistent with the conflict of interest requirements of 20 CCR 1673(i) and the related regulations.

In sum, if EnergySense raters test or inspect any work of a Branch, they can do so in compliance with the requirements of 20 CCR 1673(i), and EnergySense's operation is designed to ensure independent and objective test and inspection results from its raters in these situations. In addition, since MASCO is a large publicly traded company, MASCO has dramatically more oversight than most companies and would not risk its reputation to gain business.

I hope that my explanation has been helpful. Please do not hesitate to contact me if you would like to discuss this matter further or would like additional information.

Sincerely,

David R. Bell
President – EnergySense
(386) 763-4955

PROOF OF SERVICE

California Living & Energy v. MASCO Corporation
Docket No. 08-CRI-01

I, Diane Donner, hereby declare:

I am employed in the City and County of San Francisco, California in the office of a member of the bar of this court and at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Sonnenschein Nath & Rosenthal, 525 Market Street, 26th Floor, San Francisco, California 94105.

On March 27, 2009, I served the following documents, filed electronically with the State of California Energy Resources Conservation and Development Commission, and described as

1. **Affidavit of David Bell**
2. **Affidavit of Jim Brewer**
3. **Affidavit of Israel Calleros**
4. **Affidavit of Dan Calton**
5. **Affidavit of Mark Curry**
6. **Affidavit of Richard A. Davenport**
7. **Affidavit of Steven Heim**
8. **Affidavit of Jaime Padron**
9. **Affidavit of Richard Smith**
10. **Affidavit of Steve Weber**
11. **Affidavit of Sharon Werner**
12. **Affidavit of Timothy Williams**

on the interested parties in this action by placing a true copy thereof, on the above date, enclosed in a sealed envelope, following the ordinary business practice of Sonnenschein Nath & Rosenthal LLP, addressed as follows:

Brett L. Dickerson (via e-mail also)
Gianelli & Associates PLC
1014 16th Street
P.O. Box 3212
Modesto, CA 95353

Dave Hegarty
Duct Testers, Inc.
P.O. Box 266
Ripon, CA 95366

Carol A. Davis
CHEERS Legal Counsel
3009 Palos Verdes Drive West
Palos Verdes Estates, CA 90274

Galo LeBron, CEO
Energy Inspectors
1036 Commerce Street, Suite B
San Marco, CA 93078

John Richau, HERS Rater
Certified Energy Consulting
4782 N. Fruit Avenue
Fresno, CA 93705

Mike Hodgson
ConSol
7407 Tam O'Shanter Drive
Stockton, CA 95210-3370

Mike Bachand
California Certified Energy Rating &
Testing Services (CalCERTS)
31 Natoma Street, Suite 120
Folsom, CA 95630

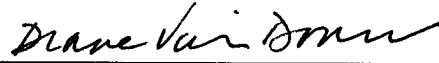
Randel Riedel
California Building Performance
Contractors Association (CBPCA)
1000 Broadway, Suite 410
Oakland, CA 94607

Robert Scott
California Home Energy Efficiency
Rating System (CHEERS)
20422 Beach Boulevard
Huntington Beach, CA 92648

Bill Lilly, President
California Living & Energy
3015 Dale Court
Ceres, CA 95307

- ☒ U.S. MAIL: I am personally and readily familiar with the business practice of Sonnenschein Nath & Rosenthal for collection and processing of correspondence for mailing with the United States Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the United States Postal Service.
- ☐ FACSIMILE TRANSMISSION: I caused such document to be sent by facsimile transmission at the above-listed fax number for the party.
- ☐ FEDERAL EXPRESS: I served the within document in a sealed Federal Express envelope with delivery fees provided for and deposited in a facility regularly maintained by Federal Express.
- ☐ HAND DELIVERY: I caused such document to be served by hand delivery.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed on March 27, 2009, at
3 San Francisco, California.
4

5 
6

DIANE VIVIAN DONNER

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