

# Memorandum

To: Docket Office

Date: August 5, 2008

From: **California Energy Commission**  
1516 Ninth Street  
Sacramento CA 95814-5512

<b>DOCKET</b>	
08-CRI-1	
DATE	AUG 05 2008
RECD.	AUG 05 2008

Subject: Efficiency Committee Order to Serve Energy Sense / MASCO with Complaint / Request for Investigation, and Appendices

Docket # 08-CRI-01

Please docket the following documents, which should have the same title as the subject line of this memorandum.

The Appendices to the Order contain the following items:

Appendix 1 – Copy of Complaint;

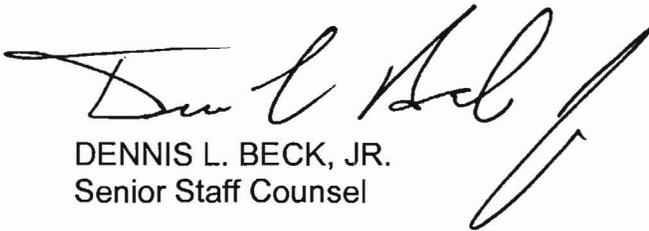
Appendix 2 – Names and addresses of complaints and interested parties;

Appendix 3 – Copies of Sections 1230 through 1237 of Title 20;

Appendix 4 – Copies of Sections 1670 through 1675 of Title 20; and

Appendix 5 – Copies of Sections 1101 through 1219 of Title 20.

Please let me know if you have any questions. Thank you.



DENNIS L. BECK, JR.  
Senior Staff Counsel

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

*Complaint / Request for Investigation* ) Docket Number 08-CRI-01  
*Regarding Energy Sense / MASCO* )  
\_\_\_\_\_ )

**EFFICIENCY COMMITTEE ORDER TO SERVE ENERGY SENSE /  
MASCO WITH COMPLAINT / REQUEST FOR INVESTIGATION**

Introduction and Summary

A complaint has been filed alleging a violation of the regulations of the California Energy Commission (“Energy Commission”) concerning the California Home Energy Rating System (“HERS”) Program. This document reflects the decision of the Efficiency Committee (“Committee”) to serve the respondents with the complaint. Under our regulations, the respondents must file an answer within 21 days of being served with the complaint.

Background and Procedural History

On July 9, 2008, a complaint was filed with the Chief Counsel’s Office of the Energy Commission. This complaint was filed pursuant to title 20, Section 1231 of the California Code of Regulations.<sup>1</sup>

The complainants are California Living & Energy (a division of William Lilly & Associates, Inc.) and Duct Testers, Inc. (collectively, “complainants”).

The alleged violators are identified in the complaint as Energy Sense / MASCO Group of Companies and Subsidiaries (collectively, “respondents”).

The complaint alleges that the respondents are in violation of Section 1673, subd. (i) (2), in that they provide HERS rating services but are not entities independent from the builder, or subcontractor installer, of energy efficiency improvements whose work is being field verified or diagnostically tested.

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<sup>1</sup> References to section numbers are to those in title 20 of the California Code of Regulations unless otherwise noted.

Pursuant to Section 1232, subd. (a), the Committee has 30 days from the filing of the complaint to either dismiss the matter or serve the complaint on the respondents.

### Analysis

The regulations regarding the California HERS Program (“HERS regulations”) are found in Sections 1670 through 1675. Section 1675, subd. (b), states that any person may file a complaint regarding a violation of the HERS regulations as provided for in Section 1230 et. seq., and that the Commission may conduct an investigation and hearing under the rules established by those sections. Thus the filing of a complaint under Section 1231 is an appropriate method of addressing an alleged violation of the HERS regulations.

The complaint references and includes the required information for filing a complaint or request for investigation, as set forth in Section 1231, subd. (b).

The complaint appears to state facts that, if found to be true, may constitute a violation of the HERS regulations, specifically Section 1673, subd. (i) (2). As such, it is appropriate to serve the complaint on the respondents.

### Order

The Committee orders that the complaint, which is attached as Appendix 1 to this order, be served on the respondents. This order, and all appendices, shall be sent to the following addresses, the former being the address of respondents listed in the complaint and the latter an address for Energy Sense found on their website and used by the Energy Commission in previous correspondence with Energy Sense:

Energy Sense / MASCO Group of Companies and Subsidiaries  
David Bell, Building Science Manager  
2339 Belville Road  
Daytona Beach, FL 32119

Energy Sense  
14655 Northwest Freeway, Suite 102  
Houston, TX 77040

Pursuant to Section 1232, subd. (a) (2), the documents shall be sent to the respondents by certified mail, return receipt requested.

The order, and all appendices, shall also be served, by first class mail, on the individuals, organizations, and businesses that the Committee has reason to believe would be adversely affected by a decision. Those persons are listed in Appendix 2, along with the names and addresses of the complainants.

Pursuant to Section 1233, subd. (a), the respondents shall file and serve an answer with the complainants, the Energy Commission, and all persons identified in Appendix 2, within 21 days after service of the complaint. As set forth in Section 1233, subd. (b), the answer shall include the following:

- 1) An admission or denial of each material allegation;
- 2) An explanation of any defenses raised by the respondent; and
- 3) A declaration under penalty of perjury as provided in Section 1231, subd. (b) (8).

Attached as Appendix 3 are copies of Sections 1230 through 1237, which contain the rules pertaining to complaints and requests for investigation. Attached as Appendix 4 are copies of Sections 1670 through 1675, which constitute the HERS regulations. Attached as Appendix 5 are copies of Sections 1101 through 1219, which contain the governing procedures for meetings and hearings of the Energy Commission.<sup>2</sup>

Dated: August 5, 2008



JACKALYNE PFANNENSTIEL  
Chairman  
California Energy Commission  
Presiding Member, Efficiency Committee



ARTHUR H. ROSENFELD, Ph.D.  
Commissioner  
California Energy Commission  
Member, Efficiency Committee

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<sup>2</sup> The provisions of California Government Code Sections 11440, et seq., may also be applicable to this proceeding.

# APPENDIX 1

Corporate Office  
3015 Dale Court  
Ceres, CA 95307  
(209) 538-2879  
(209) 538-2885 Fax

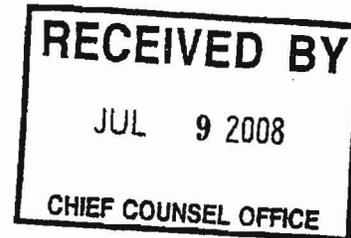


**CALIFORNIA  
LIVING & ENERGY**  
Title 24 Compliance - Residential/Non Residential

Southern California Office  
31900 Mission Trail, Suite 242  
Lake Elsinore, CA 92530  
(951) 471-1443  
Fax (951) 471-1887

Date: June 5, 2008

To: Dennis L. Beck Jr. Esq.  
Senior Staff Council  
California Energy Commission  
1516 Ninth Street, MS-14  
Sacramento, Ca. 95814



Dear Mr. Beck:

When Dave Hagarty and I met with you, Bill Pennington, Tav Commons and William Staack our goal was to build upon the base that the California Energy Commission worked so hard to achieve. Saving energy and the environment will be tough without a foundation of integrity and honesty. HERS Raters will not be able to meet the goals set by the CEC without proper training and the integrity that goes with it.

Therefore, per our meeting on March 12<sup>th</sup> 2008 and your written direction we respectfully submit the following complaint:

**I. Identification of Alleged Violator [§1231(b)(2) & (7)]**

Energy Sense/MASCO Group of Companies and Subsidiaries  
2339 Belville Road  
Daytona Beach, FL 32119  
Phone (386) 763-4955  
David Bell, Building Science Manager  
Email: dave.bell @mascocs.com

As you are aware from previous correspondence, Energy Sense is a subsidiary of MASCO Corporation. Due to the nature of this relationship, there is a significant financial interest shared between the two entities. This relationship is confirmed within the "Report of Investigation on MASCO Contractors Services and its subsidiaries in California" attached hereto as *Exhibit A5* and the letter from Dave Bell, President of Energy Sense, attached hereto as *Exhibit A3*

**II. Statement of Statute, Regulation, Order or Decision Upon Which the Complaint is based [§1231(b)(4)]**

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In accordance with Article IV, Section 1231(4) of Title 20 of the California Code of Regulations, we submit that MASCO and Energy Sense are in violation of several relevant Codes and Statutes and ordinances, including, but not limited to, California Code of Regulations, Title 20, § 1670 thru 1673 & Title 24, Chapter 7 of the 2005 Residential ACM Manual ("2005 ACM"). Based upon these violations, we formally request an immediate investigation of the above-described companies.

### III. Statement of Facts [§ 1231(b)(3)]

The following is a non-exhaustive list of specific instances in which MASCO and its subsidiaries have violated the requirements of sections 7.3, 7.4, 7.5, 7.5.1, 7.5.2, 7.5.3, 7.6 & 7.8 of the 2005 ACM.

- A. In 2006, a MASCO owned company, Coast Building Products, received contracts to perform independent 3<sup>rd</sup> party inspections while also receiving contracts to install insulation, fireplace mantels, garage doors, etc on Pulte Home Project Alturas in San Jose and the Avondale and Toscana projects in Mountain House. (See Exhibit A1 attached hereto and incorporated herein by reference)
- B. On March 5, 2007, Pulte Homes issued a report regarding work being done on their projects. In this report, they have identified MASCO as performing some of the Energy Star and Title-24 inspections. This is a clear violation of the relevant *Standards* as MASCO and its related companies carried out the installation of the very products MASCO and their subsidiaries were inspecting. (See Exhibit A1 (a) attached hereto and incorporated herein by reference)
- C. David Bell, the President of Energy Sense has confirmed in writing that Energy Sense is, in fact, a subsidiary of MASCO. He has also verbally disclosed to several parties his belief that, because MASCO is a large corporation with numerous sister companies and subsidiaries, MASCO et al can disregard CEC standards. In the attached letter, he states:

". . . Independent entity is defined as 'having no financial interest in or advocating or recommending the use of Product or Service as a means of gaining increased business.'

Rich Dunn, manager of MASCO's Coast Building Products gave Larry Stubbert in our office an advertisement that promotes exactly that. (See the 1<sup>st</sup> page of Exhibit A7 attached hereto and incorporated herein by reference)

- D. Please refer to the correspondence from William Staack, senior Staff Counsel of the CEC. Mr. Staack writes "

**0000002**

“Without supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following presumptions:”(Please refer to the letter attached hereto as Exhibit A2 for the full text of Mr. Staack’s letter)

Based upon the meeting held at the CEC in March of 2008, Mr. Staack is aware of the evidence disclosed during the course of this investigation.

- E. There are several other instances, such as Tom Hamilton Director of CHEERS stating in an e-mail to Tav Commins “Coast Building Products is fully aware of the regulatory requirements and supports the intent of the regulations” yet nothing was asked or mentioned about conflict of interest regarding sister companies or their corporate structure by Mr. Hamilton. Even though I told Tom about the relationship between sister companies under the MASCO umbrella the provider, CHEERS did nothing. (See Exhibit A7 attached hereto and incorporated herein by reference.)
- F. Please find enclosed herewith all letters and documentation which were presented at a meeting held on March 12, 2008 and attended by Bill Pennington, William Staack, Dennis Beck, Tav Commins (all of the CEC), Bill Lilly and Dave Hegarty.

#### **IV. Authority Under Which Commission May Take Action [§1231(b)(6)]**

We believe that the staff of the California Energy Commission has the authority and mandate from the California State legislature and CPUC to investigate this complaint. This action or complaint is being initiated at the request of Dennis Beck, Senior Staff Counsel to the CEC.

#### **V. Requested Action [§1231(b)(5)]**

Per section 1231(5) we, the petitioners formally request that MASCO and its related companies and subsidiaries, known and unknown, immediately cease all HERS and RESNET associated testing/inspections in California.

#### **VI. Identification of Complainant [§1231(b)(1)]**

California Living & Energy  
A Division of William Lilly & Associates, Inc.  
3015 Dale Court  
Ceres, CA 95307

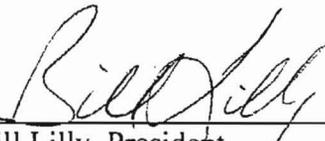
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(209) 538-2879

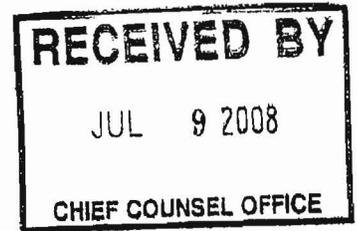
We are attaching letters of support from other Rater Companies. They have seen the data we have and support what we are striving to accomplish.

**VII. Declaration Under Penalty of Perjury [§1231(b)(8)]**

We, the undersigned declare to the best of our knowledge and under penalty of perjury to the truth and accuracy of all factual allegations contained in this complaint and request for investigation.

By:   
\_\_\_\_\_  
Bill Lilly, President  
California Living & Energy  
A division of William Lilly & Associates, Inc.

0000004



July 7, 2008

California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Attention: Dennis Beck, Esq., Senior Attorney

Dear Mr. Beck:

Our company, Energy Inspectors is a residential energy consulting company, and 3<sup>rd</sup> party HERS rating company, inspecting and certifying homes as energy efficient in California since 1999. We are a California Flex Your Power honoree, a two time EPA Energy Star Partner of the Year, and one of the leading HERS raters in the nation, with operations in four states having certified over 75,000 Energy Star homes, and many more homes as energy efficient for programs such as Title 24, and utility sponsored programs.

We are writing to you in support of the concept of having independent third party inspections and certification of energy efficient homes in California. Third party independence is necessary to ensure that there is no conflict of interest that would have a detrimental impact on the end consumer. By independent third party, we mean that the inspecting or certifying entity should have no financial interest in any aspect or component of the property being inspected and certified, including the installation of any building components being inspected or certified as per California regulations.

Though this would appear to be a straight-forward, and unambiguous definition, we understand that there exist clear violations of this statement by companies that inspect the work of affiliate companies with common ownership. To our knowledge, some of these violations have been brought to the attention of the CEC, and yet absolutely no action has been taken to remediate the situation.

We would ask that you review your policies with regards to these definitions and conflict of interest in the marketplace, and take the action required to remediate this situation to protect the California consumer. Any other course of action would be detrimental to the well being of our population, and against CEC regulations.

Page 1 of 2

We believe that these regulations were developed for consumer protection, but for reasons that remain unknown to us, have been ignored and remain unenforced by the CEC. We ask that you stand by your regulations and in the interest of the California consumer, insure that these regulations are enforced, and limit the exposure of the consumer to the unintended consequences of conflict of interest in new home inspections.

Respectfully,

Energy Inspectors Corporation

A handwritten signature in cursive script, appearing to read "Galo LeBron".

Galo LeBron, CEO

*Page 2 of 2*

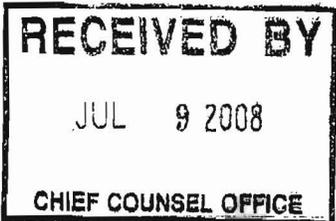
**CERTIFIED ENERGY CONSULTING**4782 N FRUIT AVE  
FRESNO, CA 93705  
www.certified-ec.com

Office: 559-226-1840 Mobile: 559-960-7899

Toll Free FAX: 888-488-8804

June 30, 2008

RE: MASCO and its subsidiary, Energy Sense



To Whom It May Concern:

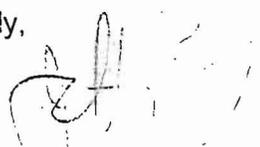
I am a HERS rater and CEPE in Fresno and I am concerned about the integrity of the HERS profession in California. An installing contractor named MASCO has a subsidiary company named Energy Sense that does their 3<sup>rd</sup> party verification and compliance certification. Others have defined this arrangement as a clear conflict of interest. I agree.

When I first learned of the MASCO/ Energy Sense arrangement I was confused because I was under the impression that the sole reason HERS raters existed was to eliminate conflicts of interests. I may be mistaken, but logic would follow that if an Energy Sense HERS rater legitimately failed an inspection of Masco's work, his or her job would be on the line or, at the very least, he or she would considered a "whistleblower".

HERS raters serve an important role in California's efficiency goals. We also protect the consumer. Our third party status is compromised when installing contractors are allowed to inspect their own work...even at arm's distance.

I urge the California Energy Commission to pursue an open and honest discussion of whether or not there is a conflict of interest with MASCO and its subsidiary, Energy Sense. I also urge the Commission to investigate any allegations of violations or irregularities concerning MASCO and Energy Sense. By doing so, the Commission will set an important precedent that will encourage others to report legitimate violations of the HERS regulations thus preserving the spirit and intent of those regulations.

Sincerely,

  
John Richau  
HERS Rater

0000007



Bill Lilly <bill.lilly@califiving.com>

# FW: Masco, Energy Sense and Conflict of Interest rules

Dave Hegarty <DaveHegarty@ducttesters.com>  
To: Bill Lilly <bill.lilly@califiving.com>

Sat, Jul 5, 2008 at 1:38 PM

*Mr. Beck  
Fy I*

**From:** Dave Hegarty  
**Sent:** Saturday, July 05, 2008 1:37 PM  
**To:** Robert Scott  
**Cc:** 'John Richau'  
**Subject:** Masco, Energy Sense and Conflict of Interest rules

**RECEIVED BY**  
JUL 9 2008  
CHIEF COUNSEL OFFICE

Dear CHEERS:

This will be the third time I am writing you and charging The BOARD of CHEERS, as to the most apparent CONFLICT OF INTEREST RULES violation by Energy Sense, A MASCO Company. Masco is doing business in the State of California and under their wholly owned subsidiary ENERGY SENSE and with CHEERS accreditation in violation of the Conflict Of Interest Rules and guidelines. I have charged the Board and Robert Scott with investigating and determining the charges that Masco is operating in without fear under CHEERS accreditation and in violation. Please see the guidelines herein cut and pasted directly from the CEC explanations:

CEC-400-2005-005-CMF  
Revision 3

## 2. Compliance and Enforcement

Page 2-16 - Compliance and Enforcement – Roles and Responsibilities

Example 2-7

Question

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

Answer

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and

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Bill Lilly <bill.lilly@califiving.com>

## FW: Masco, Energy Sense and Conflict of Interest rules

Dave Hegarty <DaveHegarty@ducttesters.com>

Sat, Jul 5, 2008 at 1:38 PM

To: Bill Lilly <bill.lilly@califiving.com>

Mr. Beck  
FYI

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**From:** Dave Hegarty

**Sent:** Saturday, July 05, 2008 1:37 PM

**To:** Robert Scott

**Cc:** 'John Richau'

**Subject:** Masco, Energy Sense and Conflict of Interest rules

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verified. They can have no financial interest in the installation of the improvements. HERS raters cannot be employees of the builder or subcontractor whose work they are verifying. Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected.

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as contract administrator for the contract, including scheduling the HERS rater, invoicing, and payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

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**0000011**

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

Please note the highlighted text and the third sentence. I understand this is an issue that has come to the Board on several occasions without resolve. As a certified CHEERS HERS Rater, I have asked CHEERS and I have provided written requests for investigation. I have provided first and second hand documentation to CHEERS which I am sure has made its way to BOARD members. I have not received anything in writing back from the BOARD as to investigations being implemented or actions taken on this matter. It is clear in this paragraph above that CHEERS has an obligation to provide "increased scrutiny of HERS raters" under the CONFLICT OF INTEREST RULE. I was told that an investigation would be done based on my request in writing, and that it would occur within 30 days. The results of any investigation that was promised and is part of the CEC charge to Providers has not been received to this date. My request was made more than 90 days ago. I ask with all due respect, when will any investigation take place and when might we expect a determination based on an investigation to arrive in our hands? And along this same vein, I have requested, in writing, a dispute or request for investigation procedure from CHEERS and have not received it to date. I have talked with Tav Cummins at the CEC and he informs me that all Providers must have a complaint system and procedure for investigation of complaints in written form for Raters and the public to access. Is this true and, if so, when might I expect that policy?

It is my belief that Masco flies in the face of the Code and rules about Conflict of Interest, as you know. But as another CHEERS put it, "the continued lack of investigation and action or determination of Masco's violation, especially in our current Energy Market, only encourages other major subcontracting interests to look closer at the Masco business model and the benefits they gain from their self testing model. Can you imagine if other major installers and manufacturers involve themselves in the HERS industry, like Masco has done, to enhance their bottom line, would there be REAL ENERGY SAVINGS. This is making a mockery of the California Energy plan". And I would have to agree with this statement. I ask CHEERS, and THE BOARD to take a good look at the implications and the violations that they have in their possession and that have been forwarded to them, and read the letter from the CEC to Masco written over a year ago and determine if there is a violation of the Conflict of Interest Rule and to make a stand of the issue as to the BOARD's determination. I ask the BOARD to make a ruling on this issue, and set the record straight as to whether it is a conflict or not. And if found to be a conflict, take the appropriate actions to resolve the issue of Masco's accreditation under CHEERS. Even though the Raters under Masco's Energy Sense umbrella, are individuals, CHEERS certified them under the Masco, Energy Sense corporate umbrella. And as you know, Masco is soliciting work from builders/developers from all their building services companies, and all of these companies are wholly owned by Masco. That is a direct violation of the Conflict of Interest rule. By continuing to ignore this issue, we are laying the ground work for more MAJOR companies to employ the same business model (in violation) and risk the real energy savings that California has enjoyed by implementation of our ENERGY CODES. As a State that is 23% better than the rest of the nation, and with the recognition that we have gained for that wise move, how do we now explain the lack of attention to the core of our CODE?

As you know, Bill Lilly of California Living and Energy, has submitted a written formal complaint to the CEC for request for and determination of, the Masco violation. I am privileged to support that document and request and ask CHEERS to also honor that request as a formal, written request for CHEERS formal investigation into the matter. His documentation is open to your scrutiny and I will provide (have already done so) copies of and additional information as to the matter and happenings. It is still my contention that whatever the violations or lack of quality of inspection having been done by Masco Raters, is not the real issue. But that Masco is, as a corporate owner of Energy Sense with better than the allowable financial interest, in violation of the CONFLICT OF INTEREST rule because of the ownership share and their "stake" in the builders business and that they continue to

0000012

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

Please note the highlighted text and the third sentence. I understand this is an issue that has come to the Board on several occasions without resolve. As a certified CHEERS HERS Rater, I have asked CHEERS and I have provided written requests for investigation. I have provided first and second hand documentation to CHEERS which I am sure has made its way to BOARD members. I have not received anything in writing back from the BOARD as to investigations being implemented or actions taken on this matter. It is clear in this paragraph above that CHEERS has an obligation to provide "increased scrutiny of HERS raters" under the CONFLICT OF INTEREST RULE. I was told that an investigation would be done based on my request in writing, and that it would occur within 30 days. The results of any investigation that was promised and is part of the CEC charge to Providers has not been received to this date. My request was made more than 90 days ago. I ask with all due respect, when will any investigation take place and when might we expect a determination based on an investigation to arrive in our hands? And along this same vein, I have requested, in writing, a dispute or request for investigation procedure from CHEERS and have not received it to date. I have talked with Tav Cummins at the CEC and he informs me that all Providers must have a complaint system and procedure for investigation of complaints in written form for Raters and the public to access. Is this true and, if so, when might I expect that policy?

It is my belief that Masco flies in the face of the Code and rules about Conflict of Interest, as you know. But as another CHEERS put it, "the continued lack of investigation and action or determination of Masco's violation, especially in our current Energy Market, only encourages other major subcontracting interests to look closer at the Masco business model and the benefits they gain from their self testing model. Can you imagine if other major installers and manufacturers involve themselves in the HERS industry, like Masco has done, to enhance their bottom line, would there be REAL ENERGY SAVINGS. This is making a mockery of the California Energy plan". And I would have to agree with this statement. I ask CHEERS, and THE BOARD to take a good look at the implications and the violations that they have in their possession and that have been forwarded to them, and read the letter from the CEC to Masco written over a year ago and determine if there is a violation of the Conflict of Interest Rule and to make a stand of the issue as to the BOARD's determination. I ask the BOARD to make a ruling on this issue, and set the record straight as to whether it is a conflict or not. And if found to be a conflict, take the appropriate actions to resolve the issue of Masco's accreditation under CHEERS. Even though the Raters under Masco's Energy Sense umbrella, are individuals, CHEERS certified them under the Masco, Energy Sense corporate umbrella. And as you know, Masco is soliciting work from builders/developers from all their building services companies, and all of these companies are wholly owned by Masco. That is a direct violation of the Conflict of Interest rule. By continuing to ignore this issue, we are laying the ground work for more MAJOR companies to employ the same business model (in violation) and risk the real energy savings that California has enjoyed by implementation of our ENERGY CODES. As a State that is 23% better than the rest of the nation, and with the recognition that we have gained for that wise move, how do we now explain the lack of attention to the core of our CODE?

As you know, Bill Lilly of California Living and Energy, has submitted a written formal complaint to the CEC for request for and determination of, the Masco violation. I am privileged to support that document and request and ask CHEERS to also honor that request as a formal, written request for CHEERS formal investigation into the matter. His documentation is open to your scrutiny and I will provide (have already done so) copies of and additional information as to the matter and happenings. It is still my contention that whatever the violations or lack of quality of inspection having been done by Masco Raters, is not the real issue. But that Masco is, as a corporate owner of Energy Sense with better than the allowable financial interest, in violation of the CONFLICT OF INTEREST rule because of the ownership share and their "stake" in the builders business and that they continue to

0000013

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**Southern California Office:**  
31900 Mission Trails, Suite 242  
Lake Elsinore, Calif. 92530

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Duct Testing 3<sup>rd</sup> Party HERS Rater  
Insulation Inspection & Certification  
Mechanical & Engineering Design  
Fax (209) 538-2885  
(951) 471-1887

## Supporting Documentation of MASCO Violation

- A. March 12 introductory letter at CEC meeting
  - A1. Pulte Homes e-mail regarding MASCO Conflict of interest
    - A1a Pulte labels MASCO
  - A2. CEC letter to Dave Bell of MASCO's Energy Sense
  - A3. Letter to Tav Commins of CEC from Dave Bell
  - A4. Insurance certificate demonstrating financial connection between Insulation Company and MASCO
  - A5. Investigated report on Masco Contractor Service
  - A6. Copy of Business card showing connection between MASCO and Sacramento Building Products
  - A7. Supporting e-mail & MASCO package offer to Builders

0000014

Corporate Office  
3015 Dale Court  
Ceres, CA 95307  
(209) 538-2879  
(209) 538-2885 Fax



**CALIFORNIA  
LIVING & ENERGY**  
Title 24 Compliance - Residential/Non Residential

Southern California Office  
31900 Mission Trail, Suite 130  
Lake Elsinore, CA 92530  
(951) 471-1443  
Fax (951) 471-1887

Date: March 12, 2008

To: William Pennington  
California Energy Commission  
1516 Ninth Street  
Sacramento, Ca. 95814-5512

William Staack  
Senior Staff Counsel  
1516 Ninth Street  
Sacramento, Ca. 95814-5512

**Re: Financial and Perceived Conflict of Interest under the California Home Energy Rating System (HERS) Program**

Dear Sirs

Per our communication, verbal and written, since March 10, 2005 I have consistently brought to you and others at the California Energy Commission evidence of MASCO violation of the Standards as set fourth in 2005 Residential Compliance Manual and other publications. The evidence that was brought to your attention directly relates to the financial conflict and collusion between MASCO and its subsidiaries performing independent 3<sup>rd</sup> party testing. This could have been address in the beginning when the Provider contacted Douglas Beaman and Associates to investigate the conflict of interest. Like everything else their report was put on the shelf. The former Director of CHEER, Tom Hamilton stated, "As such MASCO can do what they want as long as the program does not include any HERS required verification according to the CEC guidelines". MASCO sells and installs many products on subdivisions, which creates an obvious financial conflict when they test and/or inspect those installations.

In October 2002 you wrote "Independent third party field verification is required for the Standards that require such verification. The MASCO quality control does not satisfy this requirement." Even though the subject of my question and your response is related to MASCO's EFL program the situation that started this investigation has not changed. In fact, MASCO has continued to demonstrate a blatant disregard for the Standards as set forth and passed by the California Energy Commission. California Energy Commission has stated in many different forums the concept of an independent 3<sup>rd</sup> Party Rater and how important it is for the integrity of the inspection process on new construction and to the benefit of the consumer. MASCO with its wholly owned subsidiaries has ignored this

**000015**

Standard to the detriment and disregard of the homebuyer and energy conservation in California.

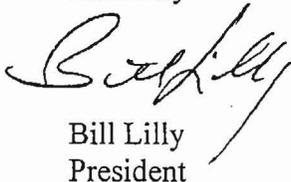
The purpose of our meeting is to bring documentation showing there is a financial (as well as perceived financial conflict) arrangement between MASCO and its subsidiaries therefore violating the Standards as set forth by the CEC and the State of California. This makes a mockery of the trust of the citizens of our State when a large Corporation can disregard the Standards that protect the consumer. I have divided the evidence as follows:

- A1. Pulte Homes e-mail regarding MASCO Conflict of interest
- A2. CEC letter to Dave Bell, President of MASCO's Energy Sense
- A3. Letter to the CEC from Dave Bell
- A4. Insurance certificate demonstrating financial connection between Insulation Company and MASCO
- A5. Private Investigator's report on Masco Contractor Service
- A6. Copy of Business card showing connection between MASCO and Sacramento Building Products
- A7. Supporting e-mail with a copy of a promotion to package all of MASCO services including HERS testing.
- A8. Copy of State Energy Standards MASCO violated

Based on the attached information and California's written statute the CEC needs to issue a cease and desist order to MASCO and its subsidiaries to stop all 3<sup>rd</sup> Party testing in the State of California as soon as possible.

California needs to stand up against a large Corporation like MASCO to send a message to other States such as Arizona that the consumer cannot be deceived or exploited. The fox will no longer be guarding the chicken coop.

Sincerely



Bill Lilly  
President

Cc: Galo LeBron, Energy Inspectors  
Scott Johnson, Action Now  
Dave Hagarty, Duct Testers

0000016

**Bill Lilly**

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**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Friday, March 31, 2006 11:39 AM  
**To:** Bill Pennington  
**Cc:** Mike Bachand; California Energy Commission; John Eash; Jeff; Larry; Bill H; Anita; Dick; thamilton@cheers.org  
**Subject:** 3rd party violation

A1

**Bill**

In October of 2002 you wrote me stating that "... The MASCO quality control process does not satisfy this requirement." With your response I mistakenly thought that this situation would not come up again. Well, it has.

Another part of the 3rd party agreement state "...HERS raters cannot have any financial interest in the Builder's or contractor's business...". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain House. Coast Building Products (an insulation company) has the independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as independent 3rd party. Suppose (this is make believe and will never happen) the Builder said unless you pass this house you may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks  
Bill

**Bill Lilly**  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

—Original Message—

**From:** Bill Lilly [mailto:bill.lilly@califliving.com]  
**Sent:** Friday, March 10, 2006 12:44 PM

0000017

To: Robert Dauth; ~~Bob~~; Larry Ortel  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbert; Bill Holbrook  
Subject: RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Pennington at the CEC ruled against Masco's EFL system several years. This is a little different in form then the previous ruling therefore I will need get confirmation from the CEC. Thanks for the understanding  
Bill

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

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 08, 2006 11:11 AM  
To: ~~Robert~~  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbert; Bill Holbrook  
Subject: Altura bid & 3rd party

Robert

2nd issue

There is a independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and sub-contractors such as insulators can not perform independent 3rd party testing on a subdivision that they have a financial interest in. Under the State statue the sub-contractor can not install or repair anything on a subdivision where they are the 3rd party inspectors. This law has been reviewed and up held by the State.

3rd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know this will never happen) who complains about some sort of energy problem. It will help you the Builder to state that you hired somebody who does not install or repair any energy related product such as HVAC, insulation, fireplaces etc. to inspect their house. You need to have somebody who is really independent and who can testify in court for you, if needed. We carry Error and Omission Insurance they don't.

4th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11

0000018

(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

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

From: [redacted] [mailto:[redacted]@Pulte.com]  
Sent: Wednesday, March 08, 2006 7:06 AM  
To: Bill Holbrook  
Cc: Larry Stubbert  
Subject: RE: Altura

Yes, it was the HERS bid. Coast Building Products was awarded the HERS inspections for both Altura and Devon Square. The decision was made largely due to the fact that that CL&E can no longer get primary wording in their insurance certificates. The other factor was price, their bid to perform the inspection was more competitive. Hope this helps Bill, let me know if there are any additional questions or concerns. Thanks.

Robert

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AI

Christine Weeks

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From: [redacted]@Pulte.com]  
Sent: Wednesday, March 29, 2006 11:55 AM  
To: Christine Weeks  
Subject: RE: Toscana @ Mountain House

Masco was awarded the energy star testing at Avondale and Toscana due to insurance issues with California Living & Energy which I believe have since been resolved. Sorry for the confusion.

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

From: Christine Weeks [mailto:christine.weeks@califliving.com]  
Sent: Wednesday, March 29, 2006 11:44 AM  
To: [redacted]  
Cc: Bill Holbrook (E-mail); Larry Stubbert (E-mail)  
Subject: Toscana @ Mountain House

~~John~~

The testing department is trying to set up this project, so that when the super calls for testing we are ready, in doing this we discovered that we don't have a signed bid for testing. Please sign and mark payment method and then fill out the Information Request page and either fax or e-mail signed bid back to me.

Thanks,  
Christine Weeks  
Marketing & Sales Assistant  
California Living and Energy  
christine.weeks@califliving.com  
209-538-2879 Ext. 13

CONFIDENTIALITY NOTICE: This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you have received this communication in error, please notify the sender immediately by email and delete the message and any file attachments from your computer. Thank you.

A7

0000020

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



May 15, 2007

A2

Mr. David R. Bell  
President – EnergySense  
14655 Northwest Freeway, Suite 102  
Houston, TX 77040

**RE: Possible Conflict of Interest under the California Home Energy Rating System (HERS) Program**

Dear Mr. Bell:

Thank you for your letter (which was not dated) responding to the California Energy Commission staff's (henceforth referred to as staff) concerns that a potential conflict of interest under the California Home Energy Rating System Program (HERS) exists between EnergySense and its parent company Masco Corporation and one or more of Masco subsidiaries. Under the HERS regulations, California Code of Regulations, title 20, sections 1670 through 1675, there is no conflict of interest if (1) providers<sup>1</sup> are legally independent entities from the raters<sup>2</sup> who provide field verification and diagnostic testing, and (2) providers and raters are legally independent entities from the builders, and subcontractors who install energy efficiency improvements that are field verified and or diagnostically tested under the HERS program.

From the facts provided in your letter, it appears that EnergySense would be considered a rater under the HERS regulations (Cal. Code Regs., tit. 20, § 1671) because it provides the raters to conduct site inspection for data collection, field verification, and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards. Also as stated in your letter, EnergySense uses raters that are certified by and registered with CHEERS, a HERS provider under California Code Regulations, title 20, section 1671.

It is staff's understanding that EnergySense is a subsidiary under corporate control of parent company, Masco Corporation and that Masco Corporation, has subsidiaries under its corporate control (e.g., Masco Services Group Corporation, Builder Services Group, Inc. and American National Services) that participate in the HERS Program. It is staff's

<sup>1</sup> Providers means an organization that administers a home energy rating system in compliance with ... [the HERS Regulations] Cal. Code Regs., tit. 20, §1671.

<sup>2</sup> Rater means a person performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards. . . Cal. Code Regs., tit. 20, § 1671.

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understanding that the nature of the Masco Corporation structure operating under the HERS program is as follows:

1. The parent Masco Corporation is a supplier of energy efficiency products that are installed under the HERS program;
2. The subsidiary Masco Services Group Corporation and its subsidiaries, Builder Services Group, Inc. and American National Services, are installers of energy efficient products that include products produced by parent Masco Corporation, and
3. The subsidiary, EnergySense, provides raters to conduct site inspection, data collection, HERS field verification, and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards of products produced by the parent Masco Corporation, and installed by subsidiaries Builder Services Group, Inc. and American National Services.

A conflict of interest exists under California Code of Regulations, title 20, section 1673 (i)(2) if a rater is not an independent entity from the builder and from the subcontractor who install energy efficiency improvements under the HERS program.<sup>3</sup> An independent entity as defined in CCR title 20 section 1671 means having no financial interest in and not advocating or recommending the use of any product or service as a means of gaining increased business.<sup>4</sup> Financial interest means an ownership interest, debt agreement, or employer/employee relationship, but does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation. (Cal. Code Regs., tit. 20, §1671)

Without supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following presumptions:

1. Parent company Masco Corporation, a supplier of energy efficiency products installed under the HERS program, has a financial interest as defined under California Code of Regulations, title 20, section 1671 in its subsidiaries EnergySense (a HERS rater), Masco Services Group Corporation (a HERS installer) and its subsidiaries, Builder Services Group, Inc (a HERS installer) and American National Services (a HERS installer).

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<sup>3</sup> Cal. Code Regs., tit. 20, §1673 (i) Conflict of Interest.

(2) Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested. Emphasis added.

<sup>4</sup> Cal. Code Regs., tit. 20, §1671: Independent Entity means 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, firms or persons specified in Section 1673(i). Note: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors

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2. As a subsidiary of parent Masco Corporation, EnergySense may not be operating as an independent entity as defined in California Code of Regulations, title 20, section 1671 because it is under corporate control of its parent, Masco Corporation, and EnergySense may advocate and recommend the use of Masco's energy efficiency products installed under the HERS program or advocate and recommend the use of Masco Corporation subsidiaries that install energy efficiency products under the HERS program.

Please provide staff with the corporate structure that exists legally between parent Masco Corporation and subsidiary EnergySense with reference to the potential conflict of interest under the HERS regulations. Such information should include but is not limited to the following:

1. Percent of corporate voting shares that the parent, Masco Corporation, owns directly or indirectly through one or more of its subsidiaries, of subsidiary EnergySense.
2. Names of any persons that are employed as a board members and/or officers in more than one of the companies under the Masco Corporation structure including the parent and any subsidiaries that provide products or services under the HERS program.
3. Does parent Masco Corporation have corporate authority over its subsidiary EnergySense for any of the following?
  - (a) Selecting the directors.
  - (b) Appointing a majority of the members of the governing board.
  - (c) Using or directing the use of the individual assets of EnergySense to achieve the objective of the parent.
  - (d) To examine the financial reports and business plans, and to otherwise hold EnergySense and its management accountable for performance expectations of the parent.
  - (e) Have voting control provisions in EnergySense's articles of incorporation or provisions that prohibit amendments of the articles without the approval of the parent.
4. Did parent Masco Corporation prepare any of the bylaws defining the designation and authority of officers, their terms of office, and their removal (for cause or no cause) for EnergySense?
5. Do EnergySense's bylaws include procedures whereby parent Masco Corporation elects and removes directors or prohibit amendments of its bylaws without the parent Masco Corporation's approval?
7. Does parent Masco Corporation, or any of its subsidiaries have a debt agreement with EnergySense?
8. Does parent Masco Corporation, or any of its subsidiaries have any employees who are also employees of EnergySense?

0000023

9. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) mention EnergySense in any written, verbal, radio or television advertising or information? If so, please submit a copy of that information.
10. Does EnergySense mention parent Masco Corporation or any of its subsidiaries in any written, verbal, radio or television advertising or information? If so, please submit a copy of that information.
11. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) provide customer referrals to EnergySense? If so, please submit examples of the full range of referral messages that are provided.
12. Does EnergySense provide customer referrals to parent Masco Corporation or any of its subsidiaries? If so, please submit examples of the full range of referral messages that are provided.
13. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) mention in bid responses or price sheets any services provided by EnergySense? If so, please submit copies of these documents.
14. Does EnergySense mention in bid responses or price sheets any services provided by parent Masco Corporation or any of its subsidiaries? If so, please submit copies of these documents.

If you have any questions concerning this letter and the staff's request for supplemental information, please contact Bill Pennington, Building and Appliance Office, at (916) 654-4939.

Sincerely,

William Staack  
Senior Staff Counsel

WS/jm

cc: Dick Ratliff, Staff Counsel IV  
William Pennington, ERDA  
Tav Commins, ERDA

0000024

1-9-07  
letter to Tav  
C CEC  
A3

# ENERGY Sense

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 CHERRS.

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.

*for inclusion*

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

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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

0000027

**Bill Lilly**

**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Wednesday, August 16, 2006 9:26 AM  
**To:** Rich Giometti; Larry; Jeff; Dick; Daniel Diaz; Bill H; Anita  
**Subject:** FYI Masco

A 4

**FYI, Larry received a copy of Masco's insurance and they do have Errors and Omission insurance. Make sure the Builders require them to have it if they are going to inspect or test in their subdivision.**

**Thanks  
Bill**

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

*Being the environment in a house at a time*

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0000028

-917 (8-89) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS**  
**MASCO FORM RR**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

	SCHEDULE
<b>Name of Person or Organization:</b> PACIFIC MOUNTAIN PARTNERS, INC. PACIFIC MOUNTAIN PARTNERS, LLC <del>AIRWAY VILLAS @ HIDDENBROOKE,</del> <del>LC</del> <i>PMP @ Creekside Meadows LLC</i> <del>PMP AT RIVER RANCH, LLC</del>	Any person or organization that the Named Insured is required to name as an Additional Insured by reason of a written contractual provision.

E: CREEKSIDE

WHO IS AN INSURED (Section II) is amended to include a person or organization as defined above. We shall indemnify the Additional Insured for all covered damages proximately caused by the negligently performed or completed work of the Named Insured. We shall further reimburse the Additional Insured for reasonable attorney's fees and necessary litigation incurred in defending against covered damages proximately caused by the negligently performed or completed work of the Named Insured, except for those attorney's fees and litigation costs paid by another insurer.

Our duty to indemnify and to reimburse attorneys' fees and litigation costs shall not exceed the product derived by multiplying the total dollar amount of liability for covered damages, or the total dollar amount of attorneys' fees and litigation costs, by that percentage of legal liability attributable to the Named Insured for covered damages as determined by a trier-of-fact in an arbitration or trial.

This endorsement controls and supercedes all other Additional Insured endorsements issued to any Additional Insured under this policy unless the Named Insured executes a written contract specifically referring to this endorsement and requiring the Named Insured to provide Additional Insured coverage under different terms. In such circumstance, the written contract shall be controlling as to the limited subject matter of this endorsement.

FORM INDEX

Masco Corporation

MWZY 55525

Effective 6-30-06

0000029



2410 San Ramon Valley Blvd., Suite 230  
San Ramon, CA 94583

**AX**

DATE:	08/15/06	E-MAIL:	susan@pacificmtpart.com
TO:		FROM:	Susan
COMPANY:	COAST BUILDING PRODUCTS	DEPARTMENT:	Accounting
CELL:		PHONE:	(925) 855-7200
AX:	209-538-2885	FAX:	(925) 855-1348

**SUBJECT:** Insurance coverage for **COAST BUILDING PRODUCTS**

I have reviewed the Certificate of Insurance dated **08/09/06** for the above insured. However, in accordance with the "Insurance Requirements" contained in our Contract, the following **checked items** require attention:

- Comprehensive General Liability, Bodily Injury and Property Damage:**
  - Each occurrence/aggregate: \$1,000,000
  - Occurrence Basis (Modified Occurrence or Claims Made Insurance is not acceptable). Include Bodily Injury, Broad Form Property Damage, Completed Products, completed Operations, Premises/Operation, contractual, Owners and Contractors Protective
  - Underground contractors must provide Explosion/Collapse/Underground (XCU)
- Automobile Liability, Bodily Injury, Property Damage:**
  - Each Occurrence/aggregate: \$1,000,000
  - Any Automobile (includes owned, nonowned and hired)
- Workers Compensation:**
  - Employer's Liability with policy limits of \$1,000,000
  - Waiver of Subrogation
- Professional Liability:**
  - Employer's Liability with policy limits of \$1,000,000
- Additional Insured Endorsement:**
  - Form CG20 10 11 85** covering:
 

<input checked="" type="checkbox"/> Pacific Mountain Partners, Inc.	<input type="checkbox"/> Fairway Villas at Hiddenbrooke, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain Partners, L.L.C.	<input type="checkbox"/> PMP at Creekside Meadows, L.L.C.
<input type="checkbox"/> Terrace View at Five Canyons, L.L.C.	<input type="checkbox"/> Countryside at Kerman, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C..
  - Endorsement to include the following provision:  
 "This insurance shall apply as **primary** insurance as respects to the additional insureds named above and any other insurance available to the additional insureds shall be excess and not contributory with the insurance afforded by this policy."
- Job description to read:**

<input type="checkbox"/> Terrace View at Five Canyons	<input type="checkbox"/> Hidden Grove at Walker Ranch
<input type="checkbox"/> The Villas at Hiddenbrooke	<input type="checkbox"/> Countryside
<input checked="" type="checkbox"/> Coronado/ Montelena	<input type="checkbox"/> Citrus at Mossdale Landing
- Certificate Holder:**

<input checked="" type="checkbox"/> Pacific Mountain Partners, Inc.	<input type="checkbox"/> Fairway Villas at Hiddenbrooke, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain Partners, L.L.C.	<input type="checkbox"/> PMP at Creekside Meadows, L.L.C.
<input type="checkbox"/> Terrace View at Five Canyons, L.L.C.	<input type="checkbox"/> Countryside at Kerman, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C.
- Insurance carriers must be "A" rated.

*Please Add Serv*

Please issue a **REVISED** certificate reflecting the above and mail the **ORIGINAL** to my attention immediately. Payments may be held as a result of noncompliance to insurance requirements.

0000030



Please resend this Endorsement with corrected names

2410 San Ramon Valley Blvd., Suite 230  
San Ramon, CA 94583

**AX**

<b>DATE:</b>	08/15/06	<b>E-MAIL:</b>	susan@pacificmtpart.com
<b>O:</b>		<b>FROM:</b>	Susan
<b>COMPANY:</b>	COAST BUILDING PRODUCTS	<b>DEPARTMENT:</b>	Accounting
<b>C:</b>	847-953-5390	<b>PHONE:</b>	(925) 855-7200
<b>AX:</b>	209-538-2885	<b>FAX:</b>	(925) 855-1348

**SUBJECT:** Insurance coverage for **COAST BUILDING PRODUCTS**

I have reviewed the Certificate of Insurance dated 08/09/06 for the above insured. However, in accordance with the "Insurance Requirements" contained in our Contract, the following **checked items** require attention:

- Comprehensive General Liability, Bodily Injury and Property Damage:**
  - Each occurrence/aggregate: \$1,000,000
  - Occurrence Basis (Modified Occurrence or Claims Made Insurance is not acceptable). Include Bodily Injury, Broad Form Property Damage, Completed Products, completed Operations, Premises/Operation, contractual, Owners and Contractors Protective
  - Underground contractors must provide Explosion/Collapse/Underground (XCU)
- Automobile Liability, Bodily Injury, Property Damage:**
  - Each Occurrence/aggregate: \$1,000,000
  - Any Automobile (includes owned, nonowned and hired)
- Workers Compensation:**
  - Employer's Liability with policy limits of \$1,000,000
  - Waiver of Subrogation
- Professional Liability:**
  - Employer's Liability with policy limits of \$1,000,000
- Additional Insured Endorsement:**
  - Form CG20 10 11 85** covering:
 

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  - Endorsement to include the following provision:  
*"This insurance shall apply as **primary** insurance as respects to the additional insureds named above and any other insurance available to the additional insureds shall be excess and not contributory with the insurance afforded by this policy."*
- Job description to read:**

<input type="checkbox"/> Terrace View at Five Canyons	<input checked="" type="checkbox"/> Hidden Grove at Walker Ranch
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<input type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C.
- Insurance carriers must be "A" rated.

Please issue a **REVISED** certificate reflecting the above and mail the **ORIGINAL** to my attention mediately. Payments may be held as a result of noncompliance to insurance requirements.

0000031

REPORT OF INVESTIGATION

AS

MASCO CONTRACTOR SERVICES

Northern California Organization and Activities

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CA Secretary of State

CA Contractor's Licenses

Inspection of Premises

Addendum

Masco Environments For Living Requirements

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REPORT PREPARED MAY 18, 2006 FOR

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

0000032

CA Secretary of State Indices:

The names *Masco Contractor*, *Masco Contractors* or *Builders Service Group* were not discovered in the CA Secretary of State Corporate indices. This search includes Limited Partnerships and/or Limited Liability Companies.

Note that *Masco Contractor Services* is incorporated in Florida under the name, *Builders Service Group*, but indexed as Masco Contractor Services Central, Inc. The name MASCO as part of a company name is utilized in at least twenty-four separate Florida corporations.

It was determined that Masco Contractor Services owns 27 insulation companies in California, as follows:

Bakersfield: Western Insulation, LP  
Ceres: Western Insulation, LP  
Concord: Coast Building Products  
Corona: Paragon Schmid Building Products (2 Locations)  
Fountain Valley: Paragon Schmid Building Products  
Fresno: Western Insulation, LP  
Fresno: Sacramento Building Products  
Hayward: Western Insulation, LP  
Lancaster: Western Insulation, LP  
Marysville: Sacramento Building Products  
Modesto: Sacramento Building Products  
Nipomo: Western Insulation, LP  
Ontario: Western Specialties  
Palm Desert: Paragon Schmid Building Products  
Poway: Schmid Building Products  
Rancho Cucamonga: Paragon Schmid Building Products  
Redding: Sacramento Building Products  
Sacramento: Sacramento Building Products  
Sacramento: Western Insulation, LP  
Salinas: Coast Building Products  
San Diego: Western Insulation, LP  
San Jose: Coast Building Products  
Santa Barbara: Santa Barbara Building Products  
Santa Rosa: Coast Building Products  
Tulare: Sacramento Building Products  
Valencia: Paragon Schmid Building Products

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Those insulation companies located in Northern California, as shown below, were searched in the California Secretary of State corporate indices with the following results:

1. Sacramento Building Products (see #5 below)
2. Western Insulation
3. Coast Building Products (see #6 below)
4. Century Insulation
5. Sacramento Insulation (see #1 above)
6. Coast Insulation (see #3 above)

CA Entity	CA ID #	Address	Agent	Date Filed/	Status
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Western Insulation, LP	2001-06600006	1029 Technology Park, Glen Allen, VA 23059	CT Corporation System	3/6/01	Active
Coast Insulation Contractors, Inc	C1542005	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	9/18/86	Active
Sacramento Insulation Contractors	0455372	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	8/1/63	Active

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***Note that all insulation contracting companies must be licensed by the CA Board of Contractors.***

Licenses for associated Masco insulation companies found in CA Contractor's License indices:

Co. Name and/or dba	Address on License	CA License No.	Status
Sacramento Insulation Contractors dba Sacramento Building Products	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	202026	Current
Sacramento Insulation Contractors dba Central Fireplace	Same as above	847391	Current
Western Insulation, LP*	Same as above	794484	Current
Coast Insulation ** Contractors, Inc. dba Coast Building Products	Same as above	465440	Current
Masco Contractor Services Central Inc dba Century Insulation	2339 Beville Rd Daytona Beach, FL 32119 386- 304-2222	424061	Expired as of 12/31/2001

\* 9 companies utilizing the name Western Insulation are shown on the CA Contractor's License indices. Of these, only one is currently active (shown above). *Additional corporate information on inactive companies available upon request.*

\*\*6 companies utilizing the name Coast Insulation are shown on the CA Contractor's License indices. Of these, only one is currently active (shown above). *Additional information on inactive companies available upon request.*

0000035

Licenses found in CA Contractor's License indices using *Masco Contractor Services* as search term: (4 inactive companies found and NOT shown below. Additional information n inactive companies available)

Co. Name and/or dba	Address on License	License No.	Status
Builder Services Group, Inc. dba Gale Insulation	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	709417	Current
Masco Contractor Services Central, Inc. Db Gearhart Building Products	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	716847	Current
Builder Services Group, Inc. dba B S I Building Products	2339 Beville Rd Daytona Beach, FL 32119 386-304-2222	814508	Current

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Masco is active in many other contracting areas, and is actively seeking business to acquire. The following information appears on their web site.

\* \* \* \* \*

*With over twenty years of experience, and over 80 acquisitions, Masco Contractor Services (MCS) has a long history of acquisition success. At MCS, acquisition success means acquiring successful companies, keeping the employees and customers satisfied, and helping the sellers achieve their objectives. When those objectives are met, we know the results will be positive for our company*

*Masco Contractor Services (MCS) is looking to grow through the acquisition of well-managed, profitable companies that add to the company's strategic growth objectives. We look for acquisitions that provide positive opportunities for both the seller and Masco Contractor Services. Specifically, we are looking for the following types of companies that provide installation services to builders and homeowners:*

*Insulation Contractors*

*Guttering Contractors*

*Shelving Contractors*

*Mirror and Shower Enclosure Contractors*

*Cabinet Distribution and Installation Companies*

*Structured Wiring*

*Garage Doors*

*Other: We are always willing to consider other business opportunities with strategic value to the company.*

*Masco Contractor Services is flexible in helping sellers achieve their objectives. As a prevailing philosophy, the employees of the seller are very valuable to MCS and therefore, we work hard to retain the employees of the acquired company, including the sellers (where possible) and managers. MCS is a growing company that provides career opportunities and extensive benefits to all of our employees.*

\* \* \* \* \*

0000037

## INSPECTION OF PREMISES:

### Pulte Homes: *Avondale* and *Toscana* in Mountain House, California

On May 10, 2006, an inspection of *Avondale* and *Toscana*, sub-divisions designated as designed and constructed by Pulte Homes, was initiated. An on-site visit to Mountain House did not reveal any sub-divisions within this Community identified as *Avondale* or *Toscana*. Information regarding both *Avondale* and *Toscana* was located during an internet search however, and Pulte Homes currently does have 4 distinct communities in Mountain House. These are entitled *Gable Lane*, *Cambridge Townhomes*, *Terra Bella* and *Amberlea* and are located within the Bethany Neighborhood. The sales offices for these Pulte homes were closed and no additional information could be obtained. The information center at Mountain House was then contacted. The clerk at this center informed us that a meeting was scheduled later this month with the various builders currently working in Mountain House. At that time, dates were to be scheduled for ground breaking of additional subdivisions to be built in the new Altamont Neighborhood, and among them would be the Pulte Developments, *Avondale* and *Toscana*. Future plans for Mountain House include twelve separate neighborhoods or 'villages', although only two neighborhoods, Bethany and Wicklund, are currently developed. A map of the proposed villages was given to us along with other promotional materials.

On May 11, 2006, contact was made with Pulte sales representatives for *Gable Lane* in Mountain House to discuss any knowledge of building plans for *Avondale* and/or *Toscana*. The representative stated that the unseasonable rains this spring have delayed the building plans and they have been told that construction will probably not start until late this summer, and to expect the models to be ready in early winter. This salesperson was very knowledgeable and proud of the energy efficiency records of Pulte Homes and wanted us to know that they (Pulte) exceed the standard Energy Star requirements and have achieved a Platinum rating, however he had no knowledge of current and/or future insulation companies used and/or any current and/or future 3<sup>rd</sup> party testing contractors.

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**INSPECTION OF PREMISES:**

Pulte Homes: *Legends, Gables* and *Groves* at Magnolia Park, in Oakley, California

On May 10, 2006, an inspection of *Legends, Gables* and *Groves* at Magnolia Park, subdivisions designated as designed and constructed by Pulte Homes was initiated. Information regarding *Legends*, and *Groves* at Magnolia Park was located during an internet search however, no current mention of *Gables* was found.

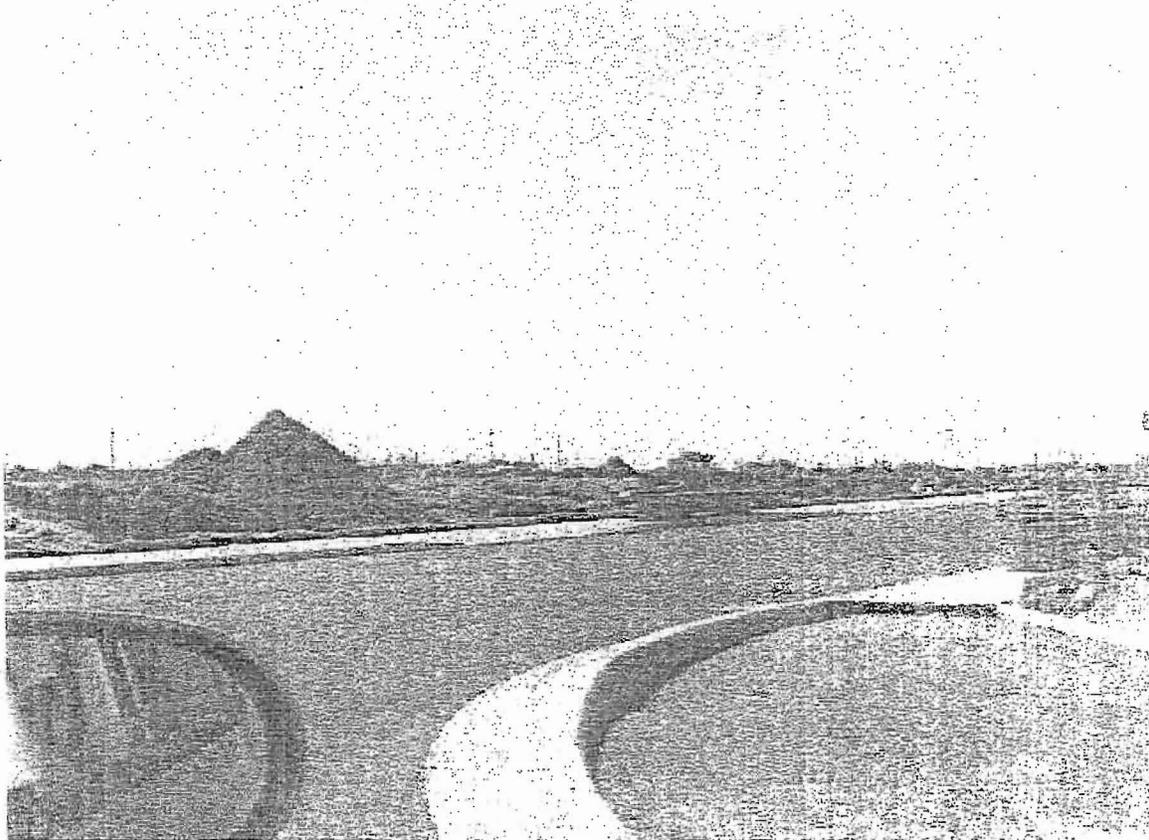
Contact was made with the Pulte Construction crew across the street from the Magnolia Park Sign (photo attached). They informed us that both *Gables* and *Groves* were still in the planning stages but that model homes were currently being built for *Legends*. When asked about the Energy Star ratings of Pulte homes and, how, exactly, they were rated and built, the construction foreman said that as far as he knew, Pulte in Brentwood had always used *California Living and Energy Consultants* for their 3rd party verifier. He added that he had no real knowledge whether any other company was to be used in Oakley, however he had heard that the new development would be using a subsidiary of *California Living and Energy Consultants*. (Brentwood and Oakley are divided by Nerolly Street and the construction crew trailers were actually in Brentwood. Pulte had subdivisions on the Brentwood side and Magnolia Park is scheduled for the Oakley side.)



0000039

**INSPECTION OF PREMISES:**

Pulte Homes: *Legends, Gables* and *Groves* at Magnolia Park, in Oakley, California

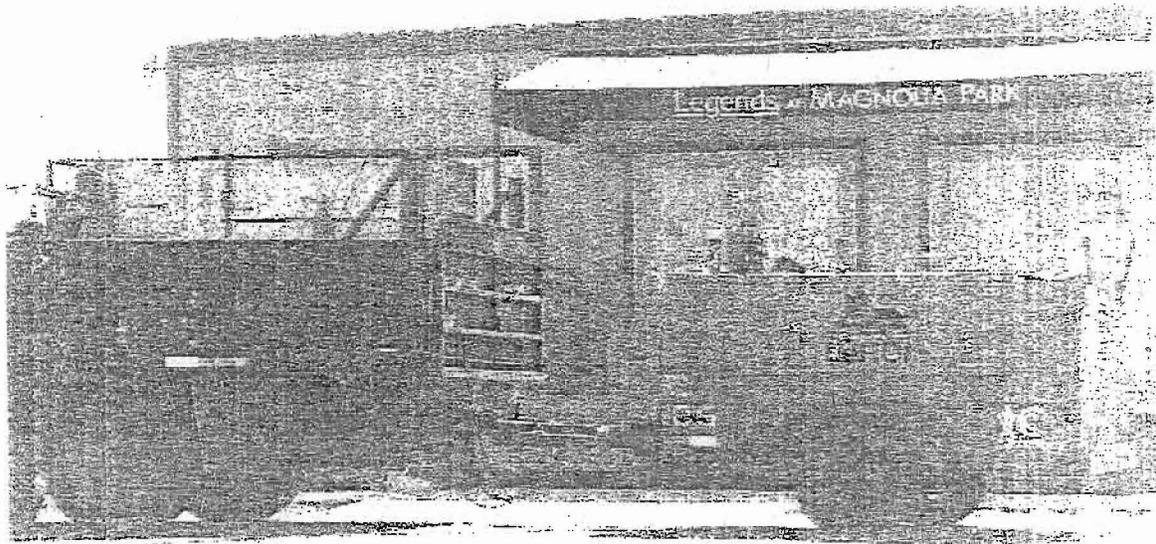


On May 11, 2006, a visual inspection of what appears to be beginning construction of *Legends* was made. (Photo above) Additionally, contact was made with sales representatives for *Estates* in Brentwood to discuss any knowledge of building plans for *Legends, Gables* and *Groves* at Magnolia Park. This salesperson appeared very knowledgeable and proud of the energy efficiency records of Pulte Homes and wanted us to know that they (Pulte) exceed the standard Energy Star requirements and have achieved a Platinum rating for their *Classics* and *Estates at Rose Garden*. He said that he had heard that Pulte was planning a new approach to achieving this rating but, at this time, he didn't know exactly what that approach would be.

0000040

## INSPECTION OF PREMISES: COMMENTS

Since the four of the five sub-divisions in question have not yet been built, no information on either the insulation company chosen or the rating company used would be available. However, since the construction of the model homes at Legends in Oakley has begun, the City of Oakley Building Permits Department was contacted for any insulation sub-contractor information. The clerk in this department, who identified herself as Ann, stated that a permit was issued for each and every home planned but that only the name of the general contractor was listed on the permit. She recommended contact with Pulte, Northern California in Pleasanton as a possible source of information. She said it was also possible that the foreman at the construction site could have the list of sub-contractors. No one was found in the site trailer during our visit.



0000041

**ADDENDUM:**

Pulte Homes, Northern California, Pleasanton, CA.

Pulte Northern California, Sales Department was contacted and an individual who identified herself as Danay, stated that the sales office for *Legends at Magnolia Park* would be opening sometime in the middle to the end of June 2006. She predicted that the model homes for *Legends* would be ready sometime in the middle of this summer. She also believed that the sales offices for *Toscana* and *Avondale* in Mountain House would open sometime in July although the model homes would not be ready until sometime this fall. Danay said that the "Platinum Rating" mentioned by the Pulte sales staff in Brentwood was specific to an entire community. Since the Mountain House community is constructed of many neighborhoods and many builders, this rating would not be utilized in Mountain House; however current plans showed that the Oakley developments would be built in accordance with new requirements that were actually in excess of the platinum rating.

Pulte Northern California, Purchasing Department was contacted and an individual who identified himself as Gary, stated that the insulation contractor being used for *Legends at Magnolia Park* was Coast Building Products, a Masco Company located in Concord, CA. Gary then stated that the inspection/building process was verified by EFL (Environments for Living), also a Masco division (or program). This process involves an entire construction program (See following information) and complete information regarding this program can be found on the Masco-csc.com website. Gary stated that this program was used in certain communities only and that other areas, such as those planned in Mountain House, were not using this program. He further said that the other communities utilized used California Living and Energy Consultants for their 3rd party verifier.

References to a company identified as *Energy Sense* were located during an Internet search. Specific biographical information on the representative sent to the national RESNET (Residential Energy Services Network) conferences in 2004 and 2005 were discovered. In that article, *Energy Sense* was referred to as "recently acquired by Masco Corporate Services" and that they worked with Pulte Homes in Texas, among others, also in Texas. In a search of California corporate indices (including LLC and LP), no mention of any company called *Energy Sense* was found. A similar search of the California Contractor Licenses indices and the Energy Star list of California inspectors authorized by CalCERTS, CBPCA, CHEERS or Home Enalaysys' did not reveal any references to companies identified as *Energy Sense*.

## MASCO "ENVIRONMENTS FOR LIVING" REQUIREMENTS:

### ***Builder Responsibilities:***

As the builder, you shall:

- Design and construct your homes to include the Program Requirements.
- Remain solely responsible for the design and construction of your homes.
- Ensure that your subcontractors understand their responsibilities in meeting the Program Requirements. This shall include ensuring that your subcontractors have completed the *Environments For Living* program's field training. It may also include amending your current agreements with subcontractors to reflect new responsibilities.
- Make any adjustments in the sequencing of trades needed to ensure that the Program Requirements are followed.
- Ensure that all applicable building codes are satisfied.
- Contact the *Environments For Living* headquarters if you believe there is a Program Requirement that conflict with a building code requirement in your location.
- Comply with the requirements of the International Energy Conservation Code for all items not addressed in the Program Requirements if you build in an area with no building code in effect.

Working together, it is our goal to provide your customers with a more comfortable and more energy-efficient home that promotes a healthier environment. The *Environments For Living* program provides homes with benefits beyond the energy and comfort guarantees that are available.

Homes that meet the *Environments For Living* Program Requirements have increased durability, enhanced indoor air quality, and manage excess internal moisture better than traditionally designed and constructed homes that fail to meet the program's performance criteria and fail to incorporate the Program Requirements.

### ***Framing:***

There shall be an air barrier\* enclosing the conditioned space.\*\* Air barrier continuity is required throughout the structure, including at features such as knee walls, soffits, garage interfaces, intersecting walls, tubs and showers, and dropped ceilings.

\*Air barriers define the location of the pressure boundary. The pressure boundary is defined as that location where 50% or more of the air pressure drop across an assembly occurs.

\*\* The conditioned space is that area within a building provided with heating and/or cooling systems capable of maintaining a minimum of 50 degrees F during the heating season and a maximum of 85 degrees F during the cooling season, or communicates directly with a conditioned space. (Reference: International Residential Building Code for One- and Two-Family Dwellings, 2000.)

### ***Thermal Envelope:***

Insulation shall be installed according to manufacturer's specifications, which include attention paid to gaps, voids, compression and wind intrusion. Insulation and the air barrier shall be installed in physical contact with each other.

For Gold, Platinum and Diamond level homes, windows shall have a solar heat gain coefficient (SHGC) of 0.63 or lower in cold climates (Zone 7) and 0.40 or lower in other climates.

For Gold, Platinum and Diamond level homes; windows shall have an overall U-value as certified by the National Fenestration Ratings Council (NFRC) of .35 or lower in cold climates (Zone 7) and .75 or lower in other climates.

Climate regions shall be defined in the Department of Energy Climate Map.

**0000043**

### **Airsealing:**

The air barrier separating the conditioned space from non-conditioned space shall be continuous. Depending on the program level, homes shall meet the following performance criteria for air tightness:

**Silver** - .50 cfm or less per square foot of envelope area at 50 pascals

**Gold** - .35 cfm or less per square foot of envelope area at 50 pascals

**Platinum** - .25 cfm or less per square foot of envelope area at 50 pascals

*cfm = cubic feet per minute*

All Homes shall be measured using a blower door, following the test protocol described in the *Environmental For Living* program's Testing Protocol.

### **Pre-Drywall:**

Holes shall be sealed with a material capable of stopping airflow. Fibrous insulation shall not be used as an air barrier in any application.

All penetrations in the top and bottom plates shall be sealed, including bottom plates to concrete slabs.

All soffits, chases, drop ceilings, and tub and shower surrounds shall be capped with a rigid material capable of stopping airflow.

The insulation in kneewalls shall be fastened in such a way that it will be in physical contact with the drywall / air barrier.

### **Post-Drywall:**

Penetrations through drywall shall be sealed with a material capable of stopping airflow.

### **Mechanicals:**

#### **Heating-Cooling-System Design-Performance**

Mechanical systems shall be sized according to the ACCA Manual J. Room-by-room load calculations using the ACCA Manual J shall be submitted for each plan to verify sizing.

Furnaces, water heaters and boilers within conditioned spaces (including basements) shall be sealed combustion or power vented units. All other combustion appliances shall be vented to the outside. Vent-less fireplaces & space heaters are not allowed.

Airflow to each room shall match designed airflow calculations from the ACCA Manual J to within +/- 10% of the average requirements for that room based on the average of 4 orientations of that specific home.

Airflow across the indoor coil and/or heat exchanger shall conform to the manufacturer's specifications.

Refrigerant charge shall be installed per the manufacturer's specifications. Inert gas (nitrogen) shall be used during any brazing/soldering of refrigerant lines.

Indoor and outdoor HVAC system components shall be "matched" according to the ARI Directory.

**0000044**

**Ducts:**

Air supply and distribution ducts located in non-conditioned spaces shall be insulated with a minimum of R-5.

All duct connections shall be sealed with a UL listed mastic product.

Depending on the program level, homes shall meet the following performance criteria for duct tightness:

**Silver** - 5% of the conditioned floor space area in cubic feet per minute or less at 25 pascals.

**Gold** - 3% of the conditioned floor space area in cubic feet per minute or less at 25 pascals.

**Platinum** - 3% of the conditioned floor space area in cubic feet per minute or less at 25 pascals. If ducts are within conditioned space, 7% of the conditioned floor space area in cubic feet per minute or less at 25 pascals.

Homes shall be measured with a duct test rig using the test protocol described in the *Environments For Living* program's Testing Protocol.

**Ventilation:**

Outside air shall be provided in every home at a minimum rate of 7.5 cfm per person plus .01 cfm per square foot of conditioned floor area. Persons per home shall be calculated using the sum of the number of bedrooms plus one. Outside air requirements shall not exceed the minimum rate requirement by more than 10% unless accounted for in the designed load calculations.

Outside air supplied by supply-only or balanced ventilation systems shall be filtered and shall include a manual damper or other means of control.

All kitchens shall have a spot ventilation system located at the cooking station(s) capable of exhausting 100 cfm to the outside.

All bathrooms shall have a ventilation system capable of exhausting 20 cfm continuous or 50 cfm intermittent to the outside.

**Pressure Balancing:**

All rooms within the conditioned space - except baths and laundry - shall not exceed +/- 3 pascals pressure differential with respect to the outside when interior doors are closed and the air handler is operating. Additional returns, transfer grilles, or jump ducts may be needed to balance each room (not part of Silver program requirements).

**Carbon-Monoxide Detectors:**

Hardwired and removable (plug in type) carbon monoxide (CO) detectors shall be installed as follows in houses having attached garages, fireplaces, wood stoves, or combustion appliances.

- Removable detectors shall be installed within one foot of the ceiling (manufacturer must approve the location). A minimum of one detector per house level or story.
- Alarms shall be placed near or outside each sleeping area (one alarm can serve the typical three bedrooms at the end of a hall).

0000045

- In homes with two or more sleeping areas, one alarm for each area.
- Any bedroom having a fireplace shall have one alarm in the room in addition to the alarm outside the room.
- Homes with elevators that open to a garage must have one alarm near each elevator door opening to the interior of the residence.
- Detectors shall be installed in accordance with manufacturer's recommendations.

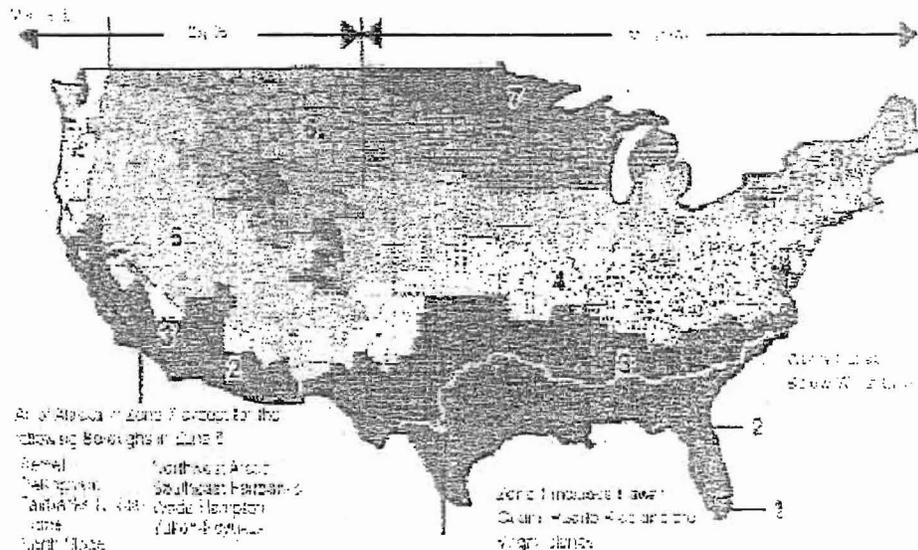
**Moisture-Management:**

Water management shall be provided as specified in the EEBA Water Management Guide. Moisture that enters building assemblies shall be allowed to dry either to the interior, exterior or both sides.

Low permeance paints (less than 1 perm, ASTM E96), vinyl wallpaper, sheet polyethylene, foil-backed gypsum board, or any other low permeance material (less than 1 perm ASTM E96) shall not be used on the interior of walls and ceilings in Zones 1-3.

Very low permeance materials (less than 0.1 perm, ASTM E96), such as polyethylene, shall not be used on the interior of walls and ceilings in Zones 4-5.

Climate regions shall be defined by the Department of Energy Climate Map.



For more information regarding the above contact us at 866-912-7233.

**Testing-Protocol:**

Homes will be tested for duct tightness, air tightness and pressure balancing. Visual inspections shall be done for framing, thermal envelope, ventilation and carbon monoxide detectors for requirement of the Program Requirements.

Duct tightness shall be measured using a duct testing and meet the Program Requirements for the level

of participation. Air tightness and pressure balancing shall be measured using a blower door test rig and meet the Program Requirements for the level of participation.  
All tests and inspections will be performed by a party authorized by the *Environments For Living* program.

### **Testing/Frequency:**

#### **Participating-Homes**

The first two production homes of each plan within a subdivision will be tested and inspected for compliance with the Program Requirements. At least 10% of all homes in the subdivision will be tested and inspected for compliance with the Program Requirements.

#### **Silver-Gold-Platinum-Diamond/Production-Homes**

The first two production homes of each plan within a subdivision will be tested and inspected for compliance with the Program Requirements. At least 15% of all homes in the subdivision will be tested and inspected for compliance with the Program Requirements.

#### **Custom/"Plus"-Homes**

All homes shall be tested and inspected for compliance with the Program Requirements.  
The *Environments For Living* program reserves the right to amend the testing frequency as may be necessary to assure compliance with these program requirements, in which case additional fees may be required.

ENVIRONMENTS FOR LIVING

0000047

CONSERVATION FOR THE CALIFORNIA LIFESTYLE

**TITLE-24/ENERGY STAR EXPERTS**  
**ENGINEERING**  
**Electrical-Mechanical-Civil**



**CALIFORNIA**  
**LIVING & ENERGY** SM

A Division of William Lilly & Associates, Inc.

TITLE 24 COMPLIANCE-RESIDENTIAL/NON-RESIDENTIAL  
3015 DALE COURT 31800 MISSION TRAIL  
CERES, CA 95307 LAKE ELSINORE CA 92530  
209-538-2879-Fx 209-538-2885 951-471-1443-Fx 471-1857

**INDEPENDENT HERS RATERS**  
**DUCT TESTING PROFESSIONALS**

AG

TO: BILL LILLY

FROM: DICK SNEDDEN

SUBJECT: MASCO

Number of pages w/ cover sheet: 2

Bill:

Here's a business card Dave Short left with us. It does say they are a Masco Co.

Thanx!

Dick



**SACRAMENTO  
BUILDING  
PRODUCTS**  
A MASCO COMPANY

1733 Morgan Road #250  
Modesto, CA 95358  
(209) 531-9000  
(209) 558-0834 Fax  
(209) 348-1420 Cell  
e-mail: david.short@masco.com

**David Short**  
HERS, EFL  
Product Manager

Insulation • Fireplaces • Mantels • Rain Gutters  
Garage Doors • Closet Organizers • CA Lic. #202026

0000049



**COAST**  
BUILDING  
PRODUCTS

Division of MASCO CONTRACTOR SERVICES

**RECEIVED BY**

JUL 9 2008

CHIEF COUNSEL OFFICE



LINE OF PRODUCTS	BRAND OF PRODUCTS
------------------	-------------------

Installed by COAST Building Products

The Package

INSULATION	Owens Corning, Certainteed, Icynene, Insulation
FIREPLACE	Superior, Lennox, Avalon
GARAGE DOOR & OPENER	Northwest Door, Wayne Dalton, Clopay Door (Opener-Liftmaster, Wayne Dalton)
MANTEL	Hearthco
CABINETS	Merillat *
PAINT	BEHR Paint*
GUTTER	Seamless Steel, Aluminum Gutter
FIRE CAULKING	Hilti
EFL - Green Environments for Living	Insulation Inspection Services GE Ecomagination Green
HERS TESTING Home Energy Rating System	Testing and Inspection Services*

\* Indicates Manufacturers products, additional products includes Millgard Windows, Delta Faucets, Kwikset Corp.

0000050

A7  
Supporting e-mail

bill

From: "Bill Pennington" <Bpenning@energy.state.ca.us>  
To: <blilly@californialivingenergy.com>  
Cc: "John Eash" <Jeash@energy.state.ca.us>  
Sent: Sunday, October 06, 2002 10:17 AM  
Subject: Re: Re:

Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement.

>>> "bill" <blilly@californialivingenergy.com> 10/05/02 02:28PM >>>  
Bill

It has been several months since you e-mailed me regarding your inquiry into Masco's program in response to my concern for what I believe is clearly (and legally) a conflict of interest. You stated that you are waiting for an explanation from Masco. Have you received it yet?

Bill, the market is changing quickly, please let me know as soon as possible what your decision is.

Sincerely

Bill Lilly

California Living & Energy  
(209)538-2879  
(949)250-1165  
(209)538-2885 Fax

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

From: Bill Pennington  
To: blilly@californialivingenergy.com ; thamilton@cheers.org  
Cc: bholbrook@californialivingenergy.com ; John Eash ; Rob Hudler ; martyn@energysoft.com ; WHughes@smud.org ; billm@soldata.com  
Sent: Wednesday, June 26, 2002 3:56 PM  
Subject: Re:

Commission staff is awaiting a letter from MASCO explaining their process. When that arrives we will decide how it relates to the conflict of interest rules.

>>> "blilly" <blilly@californialivingenergy.com> 06/26/02 10:30AM >>>

Tom

Thank you, I value your help tremendously. This helps alot.

Sincerely

Bill

California Living & Energy  
3649 Mitchell Rd Suite C  
Ceres, California 95307  
(209) 538-2879  
(209)538-2885 Fax  
califliving@afo.net

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

From: Tom Hamilton  
To: blilly ; Bill Pennington  
Cc: Bill Mattinson ; bill holbrook ; Martyn Dodd ; Rob Hudler ; Wade Hughes  
Sent: Wednesday, June 26, 2002 8:43 AM  
Subject: RE:

Bill

Here is my 2cents on the matter. I am not sure what Envrionments for Living is. I assume it is a program that is sponsored by Masco, not by the CEC, DOE, or EPA. As such Masco can do what they want as long as the program does not involve any HERS required verifications according to the CEC guidelines. If the builder uses any measure to reach T-24 or Energy Star that requires HERS verification (TXV, ducts, etc) then they

0000051

Bill Lilly

---

**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Wednesday, March 09, 2005 12:18 PM  
**To:** Bill Pennington (E-mail)  
**Cc:** Dave (E-mail); Dick (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail); John Eash (E-mail); Bryan Alcorn (E-mail)  
**Subject:** RE: Masco Process

**Bill**

*Thank you for getting back to me. Your message answered my question that there is no changes regarding the 3rd party HERS rater from being independent from a company program such as Masco's Environments for Living.*

*We believe there is several projects being built by Pulte in Southern California and one in Stockton that have this issue. We still need to do more checking with Brad Townsend and the Providers.*

*Thank You*

*Bill*

**California Living & Energy**  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
[bill.lilly@califliving.com](mailto:bill.lilly@califliving.com)  
[www.califliving.com](http://www.califliving.com)

**Note: New e-mail & Web Site**

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

**From:** Bill Lilly [mailto:bill.lilly@califliving.com]  
**Sent:** Tuesday, March 08, 2005 9:02 AM  
**To:** Bill Pennington (E-mail)  
**Cc:** Dave (E-mail); Dick (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail); John Eash (E-mail); Bryan Alcorn (E-mail)  
**Subject:** Masco Process

**Bill**

*On October 06, 2002, you responded to a question I had regarding Masco 3rd party quality control process as it applies to Energy Star and/or Title-24 independent field verification. You wrote (see attached):*

*"Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement."*

*Has anything changed?*

*<< File: Masco email from CEC 03-08-05.pdf >> Please respond soon, there are several projects in Northern and Southern California that need to be addressed.*

Bill Lilly

---

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Thursday, March 10, 2005 10:23 AM  
To: 'Delilah Levy'  
Cc: 'Bill H (E-mail)'; 'Jeff (E-mail)'; 'Larry (E-mail)'; 'Terry (E-mail)'; 'Dawn Carton'; 'Tom Hamilton'  
Dave (E-mail); Dick (E-mail)  
Subject: RE: Energy Star

Delilah

Thanks for the input, I'll follow up from here. FYI, Jaime Padron works for Sacramento Insulation which is owned by Masco Contractors Service along with Paragon Insulation. They both participate in Masco's Environments for Living Program. They are not allowed to be the 3rd party Rater for their own EFL Program. " The MASCO quality control process does not satisfy this requirement"

Thanks

Bill

California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com  
Note: New e-mail & Web Site

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

From: Delilah Levy [mailto:dlevy@cheers.org]  
Sent: Thursday, March 10, 2005 9:54 AM  
To: bill.lilly@califliving.com  
Cc: 'Bill H (E-mail)'; 'Jeff (E-mail)'; 'Larry (E-mail)'; 'Terry (E-mail)'; Dawn Carton; Tom Hamilton  
Subject: RE: Energy Star

Bill,

Thanks for your e-mail. I am not sure what the issue is. I am not aware of the insulation companies that you mentioned and Jaime Padron does not work for those companies. As far as Jaime's activity, I suggest that you contact him directly.

Thank you again for your continuing support.

Delilah Levy  
Administrative Assistant  
CHEERS  
9400 Topanga Cyn. Blvd., Suite 220  
Chatsworth, CA 91311  
www.CHEERS.org

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

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 09, 2005 12:50 PM  
To: Delilah Levy (E-mail)  
Cc: Bill H (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail)  
Subject: Energy Star

Delilah

It was good seeing you at RESNET last week, I hope all is well.  
I am trying to find out if Paragon Insulation and Sacramento Insulation  
(or Jaime Padron) tried to put any houses on the registry for Energy Star  
or  
Title-24.

If they did, there may be a conflict of interest.

California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com  
Note: New e-mail & Web Site

Bill Lilly

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Wednesday, April 05, 2006 10:42 AM  
To: Tav Commins  
Cc: Larry; Jeff; Dick; Bill H  
Subject: RE: 3rd party violation

*Pulte  
confirmation*

Thank you (and Bill) for following up on this. This is very important.  
First time I checked they are using Tom Hamilton at CHEERS as their  
provider.  
Thanks again

Bill Lilly  
President  
California Living & Energy  
15 Dale Ct.  
Fresno, California 95307  
(509) 538-2879 x11  
(509) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

**Note: New e-mail & Web Site**

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-Original Message-  
From: Tav Commins [mailto:Tcommins@energy.state.ca.us]  
Sent: Monday, April 03, 2006 9:29 AM  
bill.lilly@califliving.com  
Subject: Re: 3rd party violation

Pennington asked me to look in to this.  
Do you know who the HERS provider is for Coast Building Products?

"Bill Lilly" <bill.lilly@califliving.com> 03/31/06 11:38 AM >>>

October of 2002 you wrote me stating that "... The  
SCO quality control process does not satisfy this requirement."  
In your response I mistakenly thought that this situation would  
come up again. Well, it has.  
Another part of the 3rd party agreement state "...HERS raters cannot

0000055

have any financial interest in the Builder's or contractor's business...". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain House. Coast Building Products (an insulation company) has the independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as independent 3rd party. Suppose (this is make believe and will never happen) the Builder said unless you pass this house you may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks  
Bill

Bill Lilly  
resident  
California Living & Energy  
015 Dale Ct.  
Leres, California 95307  
209) 538-2879 x11  
209) 538-2885 Fax  
bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

---Original Message---

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Friday, March 10, 2006 12:44 PM  
To: Robert Dauth; Deb Heden; Gary Oertel  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: RE: Altura bid & 3rd party

Robert  
I thought the issue regarding 3rd party testing was resolved when Bill  
Munington at the CEC ruled against Masco's EFL system several years.  
This is a little different in form then the previous ruling therefore I  
need get confirmation from the CEC. Thanks for the understanding

Original Message---

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 08, 2006 11:11 AM  
To: Robert Dauth  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook

0000056

subject: Altura bid & 3rd party

Robert

3rd issue

There is an independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and sub-contractors such as insulators can not perform independent 3rd party testing on a subdivision that they have a financial interest in. Under the State statute the sub-contractor can not install or repair anything on a subdivision where they are the 3rd party inspectors. This law has been reviewed and upheld by the State.

4th issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know this will never happen) who complains about some sort of energy problem. I will help you the Builder to state that you hired somebody who does not install or repair any energy related product such as HVAC, insulation, fireplaces etc. to inspect their house. You need to have somebody who is really independent and who can testify in court for you, if needed. We carry Error and Omission Insurance they don't.

5th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
President  
California Living & Energy  
15 Dale Ct.  
Petaluma, California 95307  
(707) 538-2879 x11  
(707) 538-2885 Fax  
bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

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

From: Robert Dauth [mailto:[Robert.Dauth@Pulte.com](mailto:Robert.Dauth@Pulte.com)]  
Sent: Wednesday, March 08, 2006 7:06 AM  
To: Bill Holbrook  
Larry Stubbert  
Subject: RE: Altura

As it was the HERS bid. Coast Building Products was awarded the HERS inspections for both Altura and Devon Square. The decision was made primarily due to the fact that CL&E can no longer get primary wording on their insurance certificates. The other factor was price, their bid to perform the inspection was more competitive. Hope this helps Bill, please let me know if there are any additional questions or concerns. Thanks.

Robert

0000057



Bill Lilly

From: Bill-Lilly [bill.lilly@califiving.com]  
Sent: Thursday, April 13, 2006 10:23 AM  
To: Tav Commins; bill.lilly@califiving.com  
Cc: Rich Giometti; Bill H; Dick; Jeff; Larry  
Subject: 3rd party violation

Tav

I little confused or maybe I'm not the sharpest tool in the shed. I am not clear what Tom is saying. As you can see with the attached e-mail on our the previous correspondence, Pulte Homes/Northern California already gave Coast Building Products the contract to do the 3rd party testing on two subdivisions. Coast Building Products presented themselves as the "independent" 3rd party rater. I have read the sections you sent me many times plus the corresponding Building and procession code, Contractor License law and hundreds of sub-contracts sent to us by General Builders as to what a Legal entity. These Builders legally become a single financial entity with the Sub- Contractor. And by contractual definition the sub-contractor who is installing or repairing a product such as insulation on a subdivision can not be an dependent 3rd party rater on that subdivision testing or inspecting anything. There is a mutual financial interest. "By law HERS raters must be independent entities from the Builder or subcontractor installer..." Besides, when the law states "independent" what does that mean? From what is written in the section you sent me plus all other applicable laws means you should not be getting money from the back door or could I say the appearance of the back door. I have heard many times from the CEC that raters are another inspector similar to a city Building inspector. I'm sure there are some jurisdictions that would frown on one of there inspectors owning a tile company who has the contract to install tile on a subdivision and as a part of his job they were supposed to inspect that subdivision up to the frame. However, we must not only support the "intent of the CEC regulations" but actually obey them. And if we have to error lets at least error on the side of independence. I am not a lawyer and maybe I just do not get it. Maybe I need to consult somebody more wiser then I am and if I am wrong I will drop it. Free-party contracts can and have worked but it is still based on the CEC concept of "rater independence".

*They own mitigation insurance firm - Plumbing*

anks

Lilly  
President  
California Living & Energy  
5 Dale Ct  
Es, California 95307  
) 538-2879 x11  
) 538-2885 Fax

0000058

2006

bill.lilly@califiving.com

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## Note: New e-mail & Web Site

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---Original Message---

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]  
Sent: Wednesday, April 12, 2006 8:22 AM  
To: bill.lilly@califiving.com  
Subject: RE: 3rd party violation

Below is Tom's response. I have included the information on third party contract from page 2-16 of the residential

Coast Building products does have raters that are certified by CHEERS. Concerning the projects that are happening with them at this point. Pulte has been releasing the bid specs for the projects and Pulte has submitted bids for their projects. Coast Building products is fully aware of the regulatory requirements and the intent of the CEC Regulations. Due to their internal quality assurance Coast Building products is using appropriate approaches including, but not limited to the 'three-party agreement' to ensure their customers that they are receiving a valuable service, not just a service that is an expense.

Sample 2-7

Question

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

Answer

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities not affiliated with the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS raters can not be employees of the builder or subcontractor whose work they are verifying. Also, HERS raters cannot have any financial interest in the builder's or contractor's business or promote or recommend the use of any product or service that they are verifying. Section 5.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected.

The Energy Commission expects HERS raters to enter into a contract with the builder (not with subcontractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a subcontractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as contract administrator for the contract, including scheduling the HERS rater, invoicing, and compliance and Enforcement - Field Verification and/or Diagnostic Testing Page 2-17

5 Residential Compliance Manual March 2005

When provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation

000059

of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

>>> "Bill Lilly" <bill.lilly@califliving.com> 04/05/06 10:42 AM >>>

Tav

Thank you (and Bill) for following up on this. This is very important. Last time I checked they are using Tom Hamilton at CHEERS as their Provider.

Thanks again

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]

Sent: Monday, April 03, 2006 9:29 AM

To: bill.lilly@califliving.com

Subject: Re: 3rd party violation

Bill Pennington asked me to look in to this.

Do you know who the HERS provider is for Coast Building Products?

Tav

> "Bill Lilly" <bill.lilly@califliving.com> 03/31/06 11:38 AM >>>

In October of 2002 you wrote me stating that "... The ASCO quality control process does not satisfy this requirement."

In your response I mistakenly thought that this situation would come up again. Well, it has.

Another part of the 3rd party agreement state "...HERS raters cannot

have any financial interest in the Builder's or contractor's

business...". This is exactly what is happening in Pulte's Altura

project in San Jose and Toscana and Avondale @ Mountain

view. Coast Building Products (an insulation company) has

an independent 3rd party agreement for Altura. Coast is installing

and repairing their products on this project therefore are not independent.

They do not have a financial interest in this project and can not be classified as

an independent 3rd party. Suppose (this is make believe and will

not happen) the Builder said unless you pass this house you

04/06

0000060

may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks

Bill

Bill Lilly  
President  
California Living & Energy  
1015 Dale Ct.  
Irvine, California 92607  
(714) 538-2879 x11  
(714) 538-2885 Fax  
bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

--Original Message--

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Friday, March 10, 2006 12:44 PM  
To: Robert Dauth; Deb Heden; Gary Oertel  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Huntington at the CEC ruled against Masco's EFL system several years. This is a little different in form than the previous ruling therefore I will need get confirmation from the CEC. Thanks for the understanding  
Bill

--Original Message--

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 08, 2006 11:11 AM  
To: Robert Dauth  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: Altura bid & 3rd party

Robert

There is an issue regarding an independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and contractors such as insulators can not perform independent 3rd party

3/10/2006

0000061

esting on a subdivision that they have a financial interest in. Under  
the State statute the sub-contractor can not install or repair anything  
on a subdivision where they are the 3rd party inspectors. This law has  
been reviewed and upheld by the State.

#### 3rd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know  
this will never happen) who complains about some sort of energy problem.  
It will help you the Builder to state that you hired somebody who does  
not install or repair any energy related product such as HVAC,  
insulation, fireplaces etc. to inspect their house. You need to have  
somebody who is really independent and who can testify in court for you,  
if needed. We carry Error and Omission Insurance they don't.

#### 4th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
resident  
California Living & Energy  
1015 Dale Ct.  
Petaluma, California 95307  
(709) 538-2879 x11  
(709) 538-2885 Fax  
Bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

#### ---Original Message---

From: Robert Dauth [mailto:[Robert.Dauth@Pulte.com](mailto:Robert.Dauth@Pulte.com)]  
Sent: Wednesday, March 08, 2006 7:06 AM  
To: Bill Holbrook  
To: Larry Stubbert  
Subject: RE: Altura

As it was the HERS bid. Coast Building Products was awarded the HERS  
inspections for both Altura and Devon Square. The decision was made  
largely due to the fact that that CL&E can no longer get primary wording  
on their insurance certificates. The other factor was price, their bid  
to perform the inspection was more competitive. Hope this helps Bill,  
let me know if there are any additional questions or concerns. Thanks.

Robert

0000062

Bill Lilly

From: Tay Commins [Tcommins@energy.state.ca.us]  
Sent: Monday, June 05, 2006 1:05 PM  
To: bill.lilly@califiving.com  
Subject: RE: 3rd party conversation

Sorry about taking so long.

Was out of the office most of last month doing trainings at conferences, building departments, and HVAC's. HVAC changeouts.

Actually started composing an e-mail this morning to send to Tom. I am requesting a time this week if possible to have a call with the three of us to go over your concerns and hopefully agree on next steps.

Hope to get back to you today or tomorrow with a date and time.

> "Bill Lilly" <bill.lilly@califiving.com> 06/05/06 11:35 AM >>>

It has been almost two months since I have e-mailed you regarding this issue and I have subsequently talked to Bill Pennington at the CABEC conference. I have not heard anything from the CEC!

On my side, the Private Investigator and some of our people have found some possible violations (PI has more research to do). It seems a company called Energy Sense is the 3rd party rater on the Pulte Projects in question.

Masco owns Energy Sense per David Short of Sacramento Building Products. Sacramento Building Products is owned by Masco. The Three party contract for the Pulte Projects is under Coast Insulation, a Masco company, which is using another company called Energy Sense- go figure. I know the Mama and Papa but they say they are not related.

Hope the investigation is incorrect and there is no malfeasance. The more we look the more questions that are raised. Such as, where is every body on this?

Please respond.

Thanks

Masco is already on the internet using Energy Sense in Texas, it seems logical they would use it in California. David Short, who used to work for

had lunch with one of our Managers and was trying to find out how far our investigation has gotten. mmm

Bill Lilly  
President  
California Living & Energy  
5 Dale Ct.  
Fresno, California 95307  
(916) 538-2879 x11

0000063

2006

(209) 538-2885 Fax

bill.lilly@califiving.com

[www.califiving.com](http://www.califiving.com)

Note: New e-mail & Web Site

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---Original Message---

From: Bill Lilly [<mailto:bill.lilly@califiving.com>]

Sent: Monday, April 17, 2006 9:30 AM

To: Tav Commins

Cc: Rich Giometti; Anita; Bill H; Christine Weeks; Dick; Jeff; Larry

Subject: 3rd party conversation

iv

Thanks for speaking with me this morning. Per our conversation, you will review

the issues we discussed with Bill Pennington regarding Coast Building products violation (what I believe) of the third party independent requirements

stated in the residential manual plus the independence of any three party contract they may have entered into. Then you will contact the required people on how

you are monitoring this situation. I personally come to believe there may be a possible ethical issue with the three party contract as it is now substituted in the Standards. Or why would the CEC state " ...Energy Commission does not recommend it...". I plan on challenging the "three party contract" in the future.

Thanks

Lilly

President

California Living & Energy

Dale Ct

San Jose, California 95307

(209) 538-2879 x11

106

0000064

**Bill Lilly**

From: Bill Lilly [bill.lilly@califiving.com]  
Sent: Monday, June 05, 2006 11:36 AM  
To: Tav Commins  
Cc: Rich Giometti; Anita; Bill H; Dick; Jeff; Larry  
Subject: RE: 3rd party conversation

Tav

It has been almost two months since I have e-mailed you regarding this issue and I have subsequently talked to Bill Pennington at the CABEC conference. I have not heard anything from the CEC!

On my side, the Private Investigator and some of our people have found some possible violations (PI has more research to do). It seems a company called Energy Sense is the 3rd party rater on the Pulte Projects in question. Masco owns Energy Sense per David Short of Sacramento Building Products. Sacramento Building Products is owned by Masco. The Three party contract for the Pulte Projects is under Coast Insulation, a Masco company, which is using another company called Energy Sense- go figure. Same Mama and Papa but they say they are not related. I hope the investigation is incorrect and there is no malfeasance. The more we look the more questions that are raised. Such as, where is every body on this?

Please respond.

Thanks  
Bill

PS Masco is already on the inter net using Energy Sense in Texas, it seems logical they would use it in California. David Short, who used to work for us had lunch with one of our Managers and was trying to find out how far our investigation has gotten. mmm

Bill Lilly  
President  
California Living & Energy  
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Ceres, California 95307  
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bill.lilly@califiving.com  
www.califiving.com

Note: New e-mail & Web Site

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

From: Bill Lilly [mailto:bill.lilly@califiving.com]  
Sent: Monday, April 17, 2006 9:30 AM  
To: Tav Commins  
Cc: Rich Giometti; Anita; Bill H; Christine Weeks; Dick; Jeff; Larry  
Subject: 3rd party conversation

Tav

Thanks for speaking with me this morning. Per our conversation, you will review the issues we discussed with Bill Pennington regarding Coast Building Products violation (what I believe) of the third party independent requirements as stated in the residential manual plus the independence of any three party contract they may of entered in to. Then you will contact the required people on how they are monitoring this situation. I personally come to believe there may be a possible ethical issue with the three party contract as it is now constituted in the Standards. Or why would the CEC state " ...Energy Commission does not recommended it...". I plan on challenging the "three party contract" in the future.

Thanks

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califiving.com  
www.califiving.com

0000066

e-mail Subdion

Questions Regarding the Investigation of Masco Contractor Services:

1. Note\* *Masco Contractor Services* is incorporated in Florida under the name, *Builders Service Group*, but indexed as *Masco Contractor Services Central, Inc.* The name *MASCO* as part of a company name is utilized in at least 24 separate Florida corporations. Do you want us to Investigate all of the Masco related entities or just a few?

2. The name *Masco Contractor*, *Masco Contractors* or *Builders Service Group* were not discovered in the CA Secretary of State Corporate indices. This search includes Limited Partnerships and/or Limited Liability Companies

3. Are we interested in insulation companies only? <sup>yes</sup> *Masco* is active in many other contracting areas, see next pages). Would you like the Investigation to include named personnel of CA companies? Any *Masco* officer names to be searched?

4. Do you want copies of any FBNs, Articles of Incorporations, Statements of Officers? Would you want the companies searched in Civil Court in each of the respective counties?

5. County searches requested: Sacramento, Santa Clara, Alameda, Stanislaus, San Joaquin. Any additional counties? San Francisco, Marin, Sonoma, Solano, Contra Costa?

Named companies in email as follows: Note that all insulation contracting companies must be licensed by the CA Board of Contractors.

Auto - 11 @ Magnolia Park  
 11 *Legendes*  
 31 *Galles*  
 31 *Brown*  
 51 *W. C. P. ...*  
*...*  
 51 *Arvid*

1. Sacramento Building Products (see #5 below)
2. Western Insulation
3. Coast Building Products (see #6 below)
4. Century Insulation
5. Sacramento Insulation (see #1 above)
6. Coast Insulation (see #3 above)

CA Entity	CA ID #	Address	Agent	Date Filed/	Status
-----------	---------	---------	-------	-------------	--------

Western Insulation, LP	2001-06600006	1029 Technology Park, Glen Allen, VA 23059	CT Corporation System	3/6/01	Active
Coast Insulation Contractors, Inc	C1542005	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	9/18/86	Active

Bill Lilly

From: Tav Commins [Tcommins@energy.state.ca.us]  
Sent: Friday, September 08, 2006 1:39 PM  
To: bill.lilly@caliliving.com  
Subject: MASCO

I talked to the MASCO rep several weeks ago and also send him an e-mail with a list of all the requirements for conflict of interest.

I told them to put together a letter explaining to us how their new company does not violate the conflict of interest requirements.

I have not had a response to date.

Tav

916 653-1598

10-16-06 9:30 AM

He called Masco 2 or 3 times  
& no response from Masco.

He thinks he received a letter from Masco, Masco says. So, Tav will

contact them again for a response if they get no response by 10-20-06

He will say that other Ratee companies can say Masco is not following

CEC guidelines. I will follow up on 10-23-06

0000068

## HERS Regulations

### ' 1673. Requirements for Providers.

#### (i) Conflict of Interest.

- (1) Providers shall be independent entities from raters who provide field verification and diagnostic testing.
- (2) Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.

### ' 1671. Definitions.

**Financial Interest** means 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.

**Independent Entity** means 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, firms or persons specified in Section 1673(i).

NOTE: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors.

#### Residential Compliance Manual

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

Question

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

Answer

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS raters can not be employees of the builder or subcontractor whose work they are verifying. Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected.

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as contract administrator for the contract, including scheduling the HERS rater, invoicing, and

Compliance and Enforcement – Field Verification and/or Diagnostic Testing Page 2-17  
*2005 Residential Compliance Manual March 2005*

payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

**Independent Entity** means 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, firms or persons specified in Section 1673(i) of the California Home Energy Rating System Program regulations (California Code of Regulations, Title 20, Division 2, Chapter 4, Article 3). **Financial Interest** means 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.

NOTE: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors.

0000071

Bill Lilly

From: Bill Lilly [bill.lilly@califiving.com]  
Sent: Monday, October 16, 2006 3:40 PM  
To: Bill Pennington; doug@dougbeaman.com; bill.lilly@califiving.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" EERS 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@califiving.com; doug@dougbeaman.com; Bill Pennington  
Subject: MASCO Conflict of Interest

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.

12-8-06 Tuesday  
I left message

0000072

10/10/07 10:10 AM

Bill Lilly <billilycle@gmail.com>

3CO

pages

Tom Commins <Tcommins@energy.state.ca.us>  
Bill Lilly <billily@califliving.com>

Fri, Jan 5, 2007 at 2:11 PM

We are working on the reply letter to Masco regarding one Masco sub company providing HERS verification for another Masco sub company.

Have you seen or do you have any advertising literature from Masco regarding this process?

Bill Lilly <bill.lilly@califliving.com>  
To: bill.lilly@califliving.com  
From: Tom Commins <Tcommins@energy.state.ca.us>

Sat, Jan 6, 2007 at 9:31 AM

I will follow up on this Monday. I will get you something as soon as possible. Give me until this Wednesday to get back to you. Thanks

[www.califliving.com](http://www.califliving.com)

0000073

G i

Bill Lilly <blilly@califiving.com>

# Re: MASCO Conflict of Interest

3 messages

Tav Commins <Tcommins@energy.state.ca.us>  
To: William Staack <Wstaack@energy.state.ca.us>  
Cc: bill.lilly@califiving.com

Tue, Jan 9, 2007 10:53 AM

Sorry I did not get the attached letter to you sooner. I did not think I could send it to you. I received the OK from Bill P. to send it out.

The letter from MASCO is attached. It lists the subsidiaries. I believe that CHEERS will be doing the HERS verifications.

Tav

>>> William Staack 01/09/07 10:28 AM >>>  
Could I get the name Corporate names used by:

- (1)Masco Inc.,
- (2)Masco Contractor Services and its two separate corporate subsidiaries that : (a) installs energy efficiency products and (b) does the HERS.

A search online of the California Secretary of State provides no useful information. More detail information is available for a fee—but I want to contact the Secretary of State legal office to see if that can be waived for a sister agency doing an enforcement investigation.

Bill Staack, Esq, P.E.  
Senior Attorney  
Legal Office  
California Energy Commission  
(415) 654-3873

>> Bill Pennington 01/08/07 6:44 PM >>>  
< Thanks.

>> William Staack 01/05/07 3:14 PM >>>  
I have not had time to search on the Secretary of State page from MASCO and its subs due to litigation regulations and DOE petition. I should be able to get to it next week.

Bill Staack, Esq, P.E.  
Senior Attorney  
Legal Office  
California Energy Commission  
(415) 654-3873

> Bill Pennington 01/05/07 1:53 PM >>>  
I wanted to ask how we're doing on the followup to the 12/21 meeting??

0000074

Tav Commins 12/11/06 9:58 AM >>>

Received a request to move the date. The mtg has been rescheduled to the 21st.

Last month November 8th we had a meeting regarding MASCO sub companies doing HERS verification of other MASCO sub companies. We came up with several questions we wanted to MASCO.

Last month with holidays, vacation, travel and a death in my family I have only been at work 6 days. My mind is not complete enough to remember the questions we had developed.

Would like to get back together and see if we can decide what the questions should be.

LEGAL- CEC response - final.DOC  
41K

From: Bill Lilly <bill.lilly@califliving.com>  
To: bill.lilly@califliving.com  
Tav Commins <Tcommins@energy.state.ca.us>

Tue, Jan 9, 2007 at 7:21 AM

Thank you for letting me read Masco's letter. I did not receive your response to Masco. After reading Masco's letter, I thought I understood, maybe I do not understand what a "subsidiary" is. So I went to Webster's dictionary for a look see and thankfully the definition has not changed since I was in school "company controlled by another". Since they are not a non profit I would assume that they have a financial interest (Section 1671) in a subsidiary they own. Sometimes these things just come to me. Thank you for the letter. I will give it a little more time to think about it. It is just a lot of smoke and mirrors. But I must admit it is well written.  
Thanks

I will try to get the information you requested.

Bill Lilly  
Executive Director  
California Energy Center  
1515 California Street  
Sacramento, CA 95833  
www.califliving.com  
916.441.1111

LEGAL- CEC response - final.DOC  
41K

From: Bill Lilly <bill.lilly@califliving.com>  
To: Bill Lilly <bill.lilly@califliving.com>  
Mike Bachand <mike@calcerts.com>

Tue, Jan 9, 2007 at 7:00 PM

Dick Snedden <dick.snedden@califliving.com>, Randy Chaffey <randy.chaffey@califliving.com>, Larry Stubbert <larry.stubbert@califliving.com>

--- Forwarded message ---  
From: Bill Lilly <bill.lilly@califliving.com>  
Date: Jan 9, 2007 7:23 PM

0000075

MASCO Conflict of Interest

Page 1/1

Subject: Re: MASCO Conflict of Interest  
From: Tav Commins <[Tcommins@energy.state.ca.us](mailto:Tcommins@energy.state.ca.us)>

LEGAL- CEC response - final.DOC  
41K

0000076

G I

Bill Lilly <billilycl@califiving.com>

MASCO

Bill Lilly <bill.lilly@califiving.com>

Fri, Jan 19, 2007 11:11 AM

Reply-To: bill.lilly@califiving.com

Tav Commins <Tcommins@energy.state.ca.us>

Larry <larry.stubbert@califiving.com>, Dick <dick.snedden@califiving.com>, Randy Chaffey <randy.chaffey@califiving.com>

av

Sorry it has taken so long to get this info to you. We just got this Wednesday. As you can see from the communication between John Kindorf of Pulte and Evonne Revitt of Pg&E, Masco clearly has the HERS contract for Wyndam and Stratford Communities. Regardless of the subsidiary name they use, MCS, Energy Sense etc it still is addressed as Masco, it is all interrelated. Dan Schort and Rich Dunn still use the Masco e-mail address.

I am also e-mailing what we compiled the calcs with for Wyndam. I suggest you call Evonne or Linda Turkatte at PG&E for detailed information on other subdivisions Masco is providing the HERS rating. there is financial connection between all the legal entities as well as a real world connection.

Please keep me updated.

||

3: I would like to talk to you about why we believe in 100% 3rd party testing and what an easy sell it has been with the Bull...

-----

Bill Lilly  
18 Cal St  
San Francisco, CA 94107  
[www.califiving.com](http://www.califiving.com)  
949.282.25.0000

**attachments**

Wyndam @ Mountain House EFL-Energy Star 05-22-06.doc  
69K

PulteMasco.pdf  
23K

0000077

# W: Pulte projects

Larry Stubbert <larry.stubbert@califiving.com>  
From: "Bill Lilly (E-mail)" <bill.lilly@califiving.com>

Fri, Jan 19, 2007 11:17 AM

BL:

Here is the information we need for Tav.

LS

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

From: John Kindorf [mailto:John.Kindorf@Pulte.com]  
Sent: Wednesday, January 17, 2007 2:58 PM  
To: Rich.Dunn@mascoocs.com; david.short@mascoocs.com;  
larry.stubbert@califiving.com  
Cc: Revitt, Evonne; Zack Jones  
Subject: FW: Pulte projects

Attached are Request for Payment letters for projects where Masco (CHEERS) performs HERS Rating and CLE performed the Title 24/Energy Star calculations just in case you never got them from us. In addition to the communities above, Masco has HERS Rating contracts at Wyndam and Stratford. Note that PG&E has no record of these 2 newer communities.

Expect that CLE and Masco can work together to ensure the rebates are available to Pulte for all lots at Wyndam and Stratford and that the PG&E application is has been filed.

John Kindorf  
Purchasing Manager SFD  
Pulte Homes  
10 Stoneridge Mall Road, 5th Floor  
San Antonio, CA 94588  
Tel: (925) 249-3246  
Fax: (925) 249-4374  
Cell: (925) 383-5455

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

From: Revitt, Evonne [mailto:ERH2@pge.com]  
Sent: Wednesday, January 17, 2007 11:17 AM  
To: John Kindorf  
Cc: Turkatte, Linda  
Subject: FW: Pulte projects

John,

Attached are the acceptance letters and Request For Payment Forms for 6 of 7 active projects that I have for you. I am still waiting for acceptance letter and Request For Payment form for the Magnolia Park lands project and will get that to you as soon as it is ready.

0000078

Re

Re Revitt

PG&E

1955 41st Avenue, Suite B-2  
Capitola, CA 95010  
Phone: (916) 213-4032  
Fax: (831) 479-5806

—Original Message—

From: Revitt, Evonne  
Sent: Wednesday, January 17, 2007 10:42 AM  
To: 'John Kindorf'  
Subject: Pulte projects

John,

Below are the applications that I show we have for you. Were the other projects submitted under different names. Attached is a PDF file listing all projects that we have for you.

The only active projects in our database from your list below are:

Terra Bella @ Mountain House  
Amberlea @ Mountain House  
Stonardale  
Toscana  
Magnolia Park legends, Groves, and Gables

I will send you the acceptance letters for these.

Evonne

—Original Message—

From: John Kindorf [mailto:John.Kindorf@Pulte.com]  
Sent: Friday, January 12, 2007 3:07 PM  
To: Revitt, Evonne  
Subject: RE: Magnolia Park Legends by Pulte

Stonardale Lane - no application under that name  
Terra Bella - Terra Bella @ Mountain House - active  
Amberlea - Amberlea @ Mountain House - active  
Stonardale - active  
Toscana - active  
Gallery - no application under that name  
The Classics - no application under that name  
Arbors - no application under that name  
Estates - no current application under that name, all expired or paid  
Legends - Magnolia Park Legends - active  
Groves - Magnolia Park Groves - active  
Gables - Magnolia Park Gables - active  
Wynndam - expired  
Wyndam - no application under that name  
Stratford - no application under that name

John Kindorf  
Marketing Manager SFD  
Pulte Homes  
100 Stoneridge Mall Road, 5th Floor  
San Ramon, CA 94588  
Phone: (925) 249-3246  
Phone: (925) 249-4374  
Phone: (925) 383-5455

Original Message—

From: Revitt, Evonne [mailto:ERH2@pge.com]  
Sent: Friday, January 12, 2007 11:31 AM  
To: John Kindorf  
Subject: Magnolia Park Legends by Pulte

0000079

John,

Regarding Magnolia Park Legends, have you had a rater change? Caliving said they are not doing the HERS rating on this project. Do you know who the rater is and what HERS provider they are using? We are unable to locate this project in the provider database.

Thank you,

Evonne

Evonne Revitt  
G&E  
955 41st Avenue, Suite B-2  
Capitola, CA 95010  
Ph: (916) 213-4032  
AX: (831) 479-5806

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attachments

- 2007PulteMagPkGrovesRFP.pdf  
98K
- 2007PulteMagPkGrovesAcpt.pdf  
41K
- 2007PulteMagPkGablesRFP.pdf  
110K
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- 2007PulteAvondaleRFP.pdf  
85K
- 2007PulteAvondaleAcpt.pdf  
41K

0000030

Bill Lilly <blillycle@gmail.com>

MASCO

Fri, Mar 16, 2007 at 10:00 AM

Bill Lilly <bill.lilly@califliving.com>

-To: bill.lilly@califliving.com

av Commins <Tcommins@energy.state.ca.us>

arry <larry.stubbert@califliving.com>, Dick <dick.snedden@califliving.com>, Randy Chaffey <randy.chaffey@califliving.com>

Bachand <mike@calcerts.com>, galo@wredco.net

left a message on your voice mail checking on the status of the Masco investigation. I am looking at subdivisions where Masco is doing 5 different trades. This is an obvious violation of your own rules. there is financial conflict between independent 3rd party testing and the way Masco is doing it. At this time I am trying to decide what is the best way to go legally. the private investigation is done. Where do we go from here? I do know this if your legal department decides not to take Masco I will challenge it legally. Please update me.  
Thanks

0000081

y@homesbyfrontiers.com>, Steve Mothersell <scmothersell@scmhomes.com>, Steve Woodhouse  
 odhouse@florsheimhomes.com>, Sue Straw <spstraw@centexhomes.com>, "Tclendenning@Dunmorehomes. Com  
 ndenning@dunmorehomes.com>, Ted Gowdy <tgowdy@centexhomes.com>, Ted Ridenour <tridenour@scmhomes.com>  
 / Whitsitt <twhitsitt@scmhomes.com>, Thomas W Comber <TWComber@drhorton.com>, Tiffany Mueller <TMueller@centex  
 es.com>, Tim Stanley <tstanley@greenbriarhomes.com>, Tim Thomas <Tim.Thomas@ryland.com>, "Todd H. Temasco  
 d@harlynhomes.com>, Todd Leffler <tlevffler@lefcoinc.com>, Todd Lukesh <tlukesh@sigprop.com>, "Tom Doucette @  
 tters" <tdoucette@homesbyfrontiers.com>, Tony D Ponzo <adponzo@drhorton.com>, Tony Occhino <tocchino@sun  
 Oleson <Troy@pacificmtpert.com>, Randy Chaffey <randy.chaffey@califlving.com>, "Bill Lilly (E-mail)"  
 Lilly@califlving.com>, Jeff <jeff.chapman@califlving.com>, Larry <larry.stubbert@califlving.com>, Lexine Lilly  
 ne.lilly@califlving.com>, Dick <dick.snedden@califlving.com>, Anita <anita.lilly@califlving.com>, Jeremiah Ellis  
 miah.ellis@califlving.com>, Josh Stime <josh.stime@califlving.com>, Rick Fayad <rick.fayad@califlving.com>

ar Builder

This is an update to the on-going Masco/EnergySense investigation regarding HERS testing. The attorneys for  
 California Energy Commission have issued a letter to MASCO regarding a conflict of interest under the  
 California HERS Program. This is an important issue in case you are using MASCO and it's subsidiaries for  
 HERS verification.

If you have any questions please contact Randy, Dick, Larry, Jeff, Lexine or myself.

A quote on page 2 from the letter written by the attorneys for the CEC to MASCO on March 15, 2007 "With the  
 supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest  
 provision under the HERS regulations could exist between EnergySense and various entities under the MASCO  
 Corporation structure because of the following presumptions:"

Sincerely

Bill

sident  
 ifornia Living & Energy  
 5 Dale Ct.  
 es, California 95307  
 w.califlving.com  
 3) 538-2879 x11

0000082



Bill Lilly <billlycfe@gmail.com>

# date on MASCO Investigation

lilly <bill.lilly@califliving.com>

Wed, May 30, 2007 at 10:07 AM

-To: bill.lilly@califliving.com

clockhart@delvallehomes.net, clockheart@delvallehomes.net, dnazaren@ryland.com, ehamilton@dunmorehomes.com, in@delvallehomes.net, gthacher@khov.com, jjorgensen@griffinindustries.com, jrleathers@centexhomes.com, Chad A. Jones <evens@drhorton.com>, Toby Panfil <tpanfil@drhorton.com>, Abram John <AbramJ@matthewshomes.com>, Ada O'Donoghue <annell@stanpac.com>, Amar A Singh <AASingh@drhorton.com>, "Anishiura@Barryswensonbuilder. Com" <anishiura@barryswensonbuilder.com>, Arachelle Laranang <ALaranang@drhorton.com>, "Aroper@Centexhomes. Com" <aroper@centexhomes.com>, Bill Walls <BWalls@mcmillin.com>, "Blinder@Centexhomes. Com" <blinder@centexhomes.com>, "Blkoller@drhorton. com" <BLKoller@drhorton.com>, Bo Crane <bcrane@stanpac.com>, Bob Dinsmore <bdinsmore@centexhomes.com>, Bob Dolliver <dolliver@andersonhomes.com>, Bob Frasier <bfrasier@centexhomes.com>, Bob Raymush <bob@raymushhomes.com>, "Bob@Denovahomes. Com" <bob@denovahomes.com>, Brad Durga <braddurga@denovahomes.com>, Brandon Hill <Brandon.Hill@pulte.com>, Brett Deschamps <bdeschamps@centexhomes.com>, "Bhewitt@drhorton.com" <bhewitt@drhorton.com>, Carrol Stubbs <cstubbs@brookfieldhomes.com>, Chris Glenn <CGlenn@khfcorp.com>, "Chris Jones" <cjones@matthewshomes.com>, Chris Silver <csilvers@ponderosahomes.com>, Chuck DeGarmo <chuckdegarmo@griffinholdings.net>, "Craig Walker @ Shea Homes" <craig.walker@sheahomes.com>, Dale Blanchard <dbleachard@drhorton.com>, Dale Lovelace <dlovelace@scmhomes.com>, Dan Biggs <dandbiggs@raymus.com>, Dan Mettler <dmettler@anderson-homes.com>, "Danielle R. Capicotto" <drcapicotto@mdch.com>, Dave Jagoe <djagoe@ljarch.com>, "Dave Kay" <dave.kay@sheahomes.com>, David Lee <dlee@ryland.com>, Deb Heden <Deb.Heden@pulte.com>, Debra Wright <debra@woodleyarch.com>, "Don Hofer @ Shea Homes" <don.hofer@sheahomes.com>, Doug Eikenbary <deikenbary@lyonhomes.com>, Doug Livenspargar <Doug.Livenspargar@pulte.com>, Doug Nazarenus <dnazarenus@ryland.com>, Drew Layland <dlayland@matthewshomes.com>, "DRHorton - Samuel Lee (E-mail)" <drhorton@drhorton.com>, Edward Gaudreau <egaudreau@greenbriarhomes.com>, Eric Brent <Eric.Brent@pulte.com>, "Eric Keller @ Shea Homes" <eric.keller@sheahomes.com>, "Fposey@Ryland. Com" <fposey@ryland.com>, "Garret Becker @ Becker Horton Homes" <bhhomes@aol.com>, Gary Stone <gsstone5316@aol.com>, "Gcherrada@Centexhomes. Com" <gcherrada@centexhomes.com>, "Gdmiller@Centexhomes. Com" <gdmiller@centexhomes.com>, "Glen Martin @ Stanpac" <gmartin@stanpac.com>, Greg marcon <gmarcon@centexhomes.com>, Gregory Bakel <gregory.bakel@sheahomes.com>, "Gregory Ferriols" <gferriols@sigprop.com>, "Iabaptista@Centexhomes. Com" <iabaptista@centexhomes.com>, "James Brenda Jones" <james@jkbhomes.com>, Janet Hughes <jhughes@h-homes.com>, Jay Williamson <jwilliamson@khfcorp.com>, "Jeff Douthit@lennar. com" <Jeff.Douthit@lennar.com>, "Jeff. Frankel@Lyonhomes. Com" <jeff.frankel@lyonhomes.com>, "Jessica F. Coln Property Co." <couch@legacypartners.com>, Jill Marie Johnson <JillMJohnson@drhorton.com>, "Jjones@Matthewshomes. Com" <jjones@matthewshomes.com>, Joe Miller <Joe.Miller@meritagehomes.com>, John Dougherty <jdougherty@meritagehomes.com>, John ford <jford@passporthomes.com>, John Kindorf <John.Kindorf@pulte.com>, "John Mohr" <jmohr@shapecal.com>, John Severino <JSeverino@stanpac.com>, "John Vosbein @ Florsheim Homes" <johnvosbein@florsheimhomes.com>, Joseph Hanna <jhanna@stanpac.com>, Julie Collier <jcollier@newamericaohomes.com>, "Kathleen" <kilhavens@drhorton.com>, Karin Lucken <kyluck@drhorton.com>, Ken Breckenridge <Ken.Breckenridge@ryland.com>, "Kevin" <Kevin.Allen@pulte.com>, Matt Innes <minnes@scmhomes.com>, "Melanie. Grello@lennar. com" <mgrello@lennar.com>, Michael J Schafer <mjschafer@missionhomes.net>, "Michael K. Peterson @ Pinn Bros. Construction" <martinp@pinnbros.com>, "Michelle. Donathen@pulte. com" <Michelle.Donathen@pulte.com>, Mike Bachman <mbachman@calcerts.com>, "Mike Caresco @ Caresco Development" <carescohomes@aol.com>, Mike Demboski <mdemboski@pulte.com>, "Mike Perry (BAD)" <Mike.Perry@pulte.com>, "Mike Tregoning @ Shapell Industries of N. Carolina" <mtregoning@sincal.com>, Mitch Flanagan <mflanagan@griffinindustries.com>, "Mjschafer@Adobefinancial. Net" <mjschafer@adobefinancial.net>, Monaca Smith <MSmith2@stanpac.com>, Mort Newman <mnewman@greenbriarhomes.com>, "Mwitkowski@Griffinindustries. Com" <mwitkowski@griffinindustries.com>, Nancy L Springer <NLSpringer@drhorton.com>, "Ntuttle@centexhomes.com" <ntuttle@centexhomes.com>, Nick Guantone <nguantone@fcbhomes.com>, Nicole Bures <nzburres@griffinindustries.com>, "NM Johnson" <NMJohnson@drhorton.com>, Pam Nelson <pnelson@braddockandlogan.com>, "Pervin@Suncal. Com" <pervin@suncal.com>, Peter Lezak <plezak@drhorton.com>, "Peter. Beucke@Lennar. com" <Peter.Beucke@lennar.com>, "Raquela" <raquelm@pinnbros.com>, "Rbrown@Stantec. Com" <rbrown@stantec.com>, Richard Gruber <richardg@raymus.com>, "Richard @ Lafferty Homes" <rgarchar@laffertyhomes.com>, "Rlarsen@Khov. Com" <rlarsen@khov.com>, Robert Dauth <rdauth@pulte.com>, "Robert Sprague @ Mandarin Development" <roberts@mandrichdevelopments.com>, Rocky Richardson <Rocky.Richardson@pulte.com>, "Rwalker@Ponderosahomes. Com" <rwalker@ponderosahomes.com>, "Ryan" <ryanh@garymcdonaldhomes.com>, Sam Aboujudom <SAboujudom@shhomes.com>, Sandy Jennings <sjennings@pulte.com>, Sandy Pritchard <Sandy.Pritchard@pulte.com>, Scott W Johnson <SWJohnson@drhorton.com>, "Stwallace@Caltel.com" <stwallace@caltel.com>, Sean Quackenbush <seanq@wathen-castanos.com>, "Seana. Annastas@lennar. com" <seana.annastas@lennar.com>, Serena Martinez <serena@wathen-castanos.com>, Shannon Ward <sward@suncal.com>, "SAEllis@drhorton.com" <SAEllis@drhorton.com>, Sheri Catlett <sheri@jkbhomes.com>, "Sjohnson@Dunmorehomes. Com" <sjohnson@dunmorehomes.com>, Ssmith <ssmith@denovahomes.com>, Stan Chestlock <scheslock@centexhomes.com>, "Sknickerbocker" <sknickerbocker@matthewshomes.com>, Steph Peeks <steph@denovahomes.com>, "Steve" <steve@denovahomes.com>

0000083

Bill Lilly <bill.lilly@califiving.com>

## MASCO Letter

Commins <Tcommins@energy.state.ca.us>  
Bill Lilly <bill.lilly@califiving.com>

Tue, May 29, 2007 10:11 AM

Attached is the letter that went out May 15th.

You will see that on page the bottom of page 2 "Without supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following assumptions:"

Bill P. sent an e-mail this morning to William Staack the attorney who wrote the letter asking when we should follow up.

MASCO Conflict of Interest-MAY15rev.doc  
83K

0000084

Bill Lilly <billylilly@califl.com>

# MASCO Results -

Bill Lilly <bill.lilly@califl.com>

Tue, Jun 19, 2007 10:41 AM

Reply-To: bill.lilly@califl.com

To: Tav Commins <tcommins@energy.state.ca.us>, "Pennington, Bill" <Bpenning@energy.state.ca.us>

Tav

I hold all is well and you are enjoying your vacation. If it is not your vacation well... continue working. Since our last e-mail I have been wondering what were the results of CEC attorneys and their meeting with MASCO on 6/14/07. What amazes me is that everybody I talk to see a financial conflict even their two competitors (there is not many left) in the state. What does CHEERS think?

Thanks  
Bill

President  
California Living & Energy  
015 Dale Ct.  
Fresno, California 95307  
  
(209) 538-2879 x11

Per Tab  
They are having a  
conference call Wed  
8-8:00. Tav asked me not  
to Broadcast what was being  
done.

0000085



Bill Lilly <bill.lilly@califliving.com>

Masco

Tav Commins <Tcommins@energy.state.ca.us>  
To: Bill Lilly <bill.lilly@califliving.com>

Mon, Nov 19, 2007 at 10:46 AM

I set up several mtg's with the group to ask MASCO several questions. Bill kept having to cancel. After receiving this msg on the 31st I sent an e-mail to my attorney suggesting that we just send MASCO an e-mail with the question.

I just went down today and talked to the attorney and he said he will send the e-mail requesting the information. It is only one question that should be easy for them to answer.

As long as my attorney sends the info we should have the info soon and it will be easy to make a conclusion.

Tav

>>> "Bill Lilly" <bill.lilly@califliving.com> 10/31/2007 10:43 AM >>>  
[Quoted text hidden]

*to Tav  
-1207 I left message about status of  
masco & what I heard from  
Reyen Baudis  
2-4-08 4:10pm  
I left message on status of Masco problem.  
I received correspondence from Dave N regarding  
masco violations.*

0000086



Bill Lilly &lt;bill.lilly@califiving.com&gt;

## Masco violations

Bill Lilly &lt;bill.lilly@califiving.com&gt;

Thu, Feb 14, 2008 at 10:02 PM

To: Tav Commins &lt;tcommins@energy.state.ca.us&gt;

Cc: Bill Mattinson <billm@soldata.com>, Bill Dakin <bldakin@davisenergy.com>, bretkillings@yahoo.com, Berl Sanchez <BSanchez@turlock.ca.us>, airapparent@comcast.net, Allen Amaro <amaroconstruction@yahoo.com>, donn@greenhomesavvy.com, donnull@ducttesters.com, DBlanke@semprautilities.com, Gordon Beall <foservices@comcast.net>, golferjohn@starstream.net, geodb@idiom.com, Gary Wollin <gary@dougbeaman.com>, gmahoney@cityofdavis.org, hvacconsultant@msn.com, hoffmaninsulation@yahoo.com, hersrater@sbcglobal.net, info@greatvalley.org, jamader@rhainc.com, jennifer@hersolar.com, Linda Murphy <murphy@h-m-g.com>, Linda Murphy <lsmt24@yahoo.com>, lsmt24@comcast.net, mikbet@sti.net, mhosiier@ci.manteca.ca.us, mike@calcerts.com, mwood@cityofdavis.org, miguel@whainc.com, mart@energysoft.com, Pepper <pepper@davisenergy.com>, paul@northbayenergy.com, passe.jonathan@epa.gov, Robert Scott <rscott@cheers.org>, Dave Hegarty <davehegarty@ducttesters.com>, Randy Chaffey <Randy.Chaffey@califiving.com>, Lexine Lilly <lexine.lilly@califiving.com>, Larry <larry.stubbert@califiving.com>, Jeff <jeff.chapman@califiving.com>, Mark Gallant <mark@title-24.com>, "G. LeBron" <galo@wredco.net>

Tav

Are you Serious? That question has been answered a long time ago. Per yours and Bill Pennington's request the CEC lawyers have been involved in this for over 18 months. This investigation has been going since March 10, 2005 per our conversations at that time. Dave Bell VP of MASCO even wrote you a letter stating "Energy Sense, like MSG is a direct subsidiary of MASCO...". Tom Hamilton (this has been going on for a long time) of CHEERS asked Doug Beaman & Associates to investigate this. Doug completed his investigation turned it over to you with no major discrepancy with what I told you. also, I personally hired a Private Investigator from San Francisco to verify this. One of his conclusions was "It was determined that Masco Contractor Services owns 27 insulation companies in California, as follows: He listed all of them. (talk about a monopoly). You sent a Letter to MASCO titled "Possible Conflict...". You actually received e-mail from one of the largest Builders in the Country confirming the relationship. What about the Masco insurance cert?

On a separate but equally egregious issue was MASCO's EFL Program which Bill Pennington wrote in 2002 "Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement." I response is "da"!

there are other items we have reviewed in the past several years that illustrate their violation of the Standards.

Now, what does it take to call a violation, a violation? What more needs to be done for the California Energy Commission to act? This has dragged on for to long

sincerely  
Bill Lilly

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]

Sent: Wednesday, February 13, 2008 11:21 AM

To: DAVE HEGARTY

Subject: Re: FW: Masco

0000087

My lawyer wants to know what evidence you have that Sacramento Building Products, Western Insulation and Coast are all MASCO companies?

Tav

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 2/7/2008 11:46 AM >>>  
Tav; for your files and add one more rater as concerned for their (Masco) violation of conflict of interest. If everyone would contact the CEC about this, the issue would be brought to a head. dave

—Original Message—

From: George J. Nesbitt [mailto:geodb@idiom.com]  
Sent: Thursday, February 07, 2008 10:57 AM  
To: DAVE HEGARTY  
Cc: Tcommmins@energy.state.ca.us  
Subject: Re: Masco

Great job.

When I went through the 2005 update training there were several MASCO Raters in the class. I don't know if previously they only owned product manufacturing. The subject of there buying install companies came up and the conflict of Rating jobs with installations by MASCO subcontractors. I guess I now know how it was (wasn't) handled.

All MASCO HERS Verifications should be disqualified, and given to truly independent Raters.

DAVE HEGARTY wrote:

Tav: sorry this took so long to get out. I am writing you to remind you that Masco's Energy Sense is doing all of D R Horton work for Rating and that, in Manteca, they (MASCO) are rating their own work as in Sacramento Building Products installation of insulation and D R Horton's QII measures. They (Masco) are doing the rating for Western Insulation and Coast as well. All Companies owned and operated by MASCO and profits relating to these Companies flow into the MASCO conglomeration. I am in possession of evidence in the form of movies and still pictures of the work being done at D R Horton, which shows the quality of the work being done and does not meet the QII measures standards from my perspective. It is with the greatest of concern and frustration that I call your attention to this matter. It is our greatest desire to call attention to this travesty and our understanding of CEC rules and guidelines and that MASCO is being allowed to continue to RATE for themselves and the clients that they can and do sway with energy measures to capture the insulation work of those clients. Why else would Masco spend the time, energy and money to develop a portion of their business that brings the least profit to their entire business model. Their interests reside in the reduction of cost to their client (and themselves), if they are used as the rater as opposed to legitimate raters with no secondary interest, and the protection Masco gets from SELF RATING in connection with sampling. Has Masco documented any time when they have asked the installation side to REWORK or has not passed the QII measures? The pictures I have, prove at least one thing, and that is that QII is not being taken seriously by Masco when it is their own installation (when one of their own companies is doing the install). We asked the Builder to see the CF6R forms and the CF4R forms for the installation, he did not understand or

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recognize our request. Of course this could have been a cautious reaction to priority information, but I was convinced that he had no knowledge of the forms. It is a daily task and expense for our Rater companies to get the CF6R forms for each house under a Masco insulation contract. We struggle everyday to get them to respond to CEC rules on CF6R forms for each house to provide sample groupings and "tested" houses. It is Masco employees' knowledge that no one comes behind them to insure proper insulation installation and to fill out the CF6R for each house, just interview any onsite employee, they will let you know that never happens. Does Masco possess any documentation of failure or correction, and doesn't CEC rules and interpretations require it as a "perceived compromise" candidate.

At the very least, the quotes below are appropriate and provide a clear intent, especially under the Providers and their responsibility to "increased scrutiny" of such raters. Thanks for listening. Could CEC respond to this situation in a clear and timely manner? We appreciate your attention to this matter.

HERS raters are expected to be objective, independent, third parties when they are fulfilling

their duties as field verifiers and diagnostic testers. In this role they are serving as special

inspectors for local building departments. By law HERS raters must be independent entities

from the builder or subcontractor installer of the energy efficiency features being tested and

verified. They can have no financial interest in the installation of the improvements. HERS

raters cannot be employees of the builder or subcontractor whose work they are verifying.

Also, HERS raters cannot have any financial interest in the builder's or contractor's business or

advocate or recommend the use of any product or service that they are verifying. Section

106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other

means) by the contractor who performed the work that is being inspected

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS

providers to certify and oversee HERS raters throughout the state. These providers are

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required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the

performance of their duties and to respond to complaints about HERS rater performance. In

cases where there may be real or perceived compromising of HERS rater independence, they

are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure

objective, accurate reporting of diagnostic testing and field verification results, in compliance

with Energy Commission adopted procedures.

Building

Dave Hegarty

No virus found in this incoming message.  
Checked by AVG Free Edition.  
Version: 7.5.516 / Virus Database: 269.20.4/1275 - Release Date: 2/12/2008 3:20 PM

No virus found in this outgoing message.  
Checked by AVG Free Edition.  
Version: 7.5.516 / Virus Database: 269.20.4/1275 - Release Date: 2/12/2008 3:20 PM

—  
Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct  
Ceres, Ca. 95307  
209-538-2879 x11

0000090



Bill Lilly &lt;bill.lilly@califiving.com&gt;

## Masco

DAVE HEGARTY <davehegarty@ducttesters.com>  
To: Tav Commins <Tcommins@energy.state.ca.us>

Mon, Feb 4, 2008 at 3:17 PM

Tav: sorry this took so long to get out. I am writing you to remind you that Masco's *Energy Sense* is doing all of D R Horton work for Rating and that, in Manteca, they (MASCO) are rating their own work as in Sacramento Building Products installation of insulation and D R Horton's QII measures. They (Masco) are doing the rating for Western Insulation and Coast as well. All Companies owned and operated by MASCO and profits relating to these Companies flow into the MASCO conglomeration. I am in possession of evidence in the form of movies and still pictures of the work being done at D R Horton, which shows the quality of the work being done and does not meet the QII measures standards from my perspective. It is with the greatest of concern and frustration that I call your attention to this matter. It is our greatest desire to call attention to this travesty and our understanding of CEC rules and guidelines and that MASCO is being allowed to continue to RATE for themselves and the clients that they can and do sway with energy measures to capture the insulation work of those clients. Why else would Masco spend the time, energy and money to develop a portion of their business that brings the least profit to their entire business model. Their interests reside in the reduction of cost to their client (and themselves), if they are used as the rater as opposed to legitimate raters with no secondary interest, and the protection Masco gets from SELF RATING in connection with sampling. Has Masco documented any time when they have asked the installation side to REWORK or has not passed the QII measures? The pictures I have, prove at least one thing, and that is that QII is not being taken seriously by Masco when it is their own installation (when one of their own companies is doing the install). We asked the Builder to see the CF6R forms and the CF4R forms for the installation, he did not understand or recognize our request. Of course this could have been a cautious reaction to priority information, but I was convinced that he had no knowledge of the forms. It is a daily task and expense for our Rater companies to get the CF6R forms for each house under a Masco insulation contract. We struggle everyday to get them to respond to CEC rules on CF6R forms for each house to provide sample groupings and "tested" houses. It is Masco employees' knowledge that no one comes behind them to insure proper insulation installation and to fill out the CF6R for each house, just interview any onsite employee, they will let you know that never happens. Does Masco possess any documentation of failure or correction, and doesn't CEC rules and interpretations require it as a "perceived compromise" candidate.

At the very least, the quotes below are appropriate and provide a clear intent, especially under the Providers and their responsibility to "increased scrutiny" of such raters. Thanks for listening. Could CEC respond to this situation in a clear and timely manner? We appreciate your attention to this matter.

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS

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raters cannot be employees of the builder or subcontractor whose work they are verifying.

Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building

Dave Hegarty

**Duct Testers**  
by Dave Hegarty



0000092



Bill Lilly <bill.lilly@califliving.com>

---

## Masco

Bill Lilly <bill.lilly@califliving.com>

Tue, Feb 5, 2008 at 10:29 AM

To: Tav Commins <Tcommins@energy.state.ca.us>

Cc: DAVE HEGARTY <davehegarty@ducttesters.com>, Mark Alatorre <Malatorr@energy.state.ca.us>, William Staack <Wstaack@energy.state.ca.us>

Tav & Mark

Thanks for your concern. I can not stress enough how important I believe Masco's violation of the Standards are.

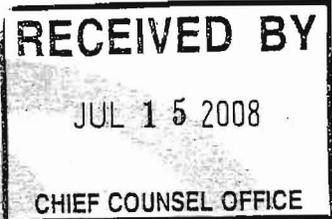
I talked to Hoffman Insulation yesterday and they said that MASCO is using a point system rebate for services provided on subdivisions which include installing insulation and inspecting HQI. Hoffman will try to get a copy of Masco's program. I will forward it to you as soon as I get it.

Bill

[Quoted text hidden]

—  
Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct  
Ceres, Ca. 95307  
209-538-2879 x11

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# DuctTesters

by Dave Hegarty

July 9, 2008

California Energy Commission  
Dennis L. Beck Jr., Esq.  
1516 Ninth Street, MS-14  
Sacramento, California 95814

Re: Masco/Energy Sense

Dear Mr. Beck:

DuctTesters, Inc. is a Third Party HERS testing and energy consulting Company based in the Central Valley. We are EPA/Energy Star Partners, CABEC members and hold certification with all three California Providers. DuctTesters, Inc. is also proud to be a part of the new CalHERS nonprofit Rater organization, working toward Integrity, information and education in the California HERS industry.

We are asking you to include our Company in the complaint filed by California Living and Energy, Bill Lilly. As we expressed in our meeting with you on March 12, 2008, we also believe that Masco/Energy Sense is in Violation Title 20 as stated in Bill's "formal" complaint. We also believe that the violation includes "conflict of interest" against the California Contractors rules mentioned in your letter to Masco in 2006.

It is unclear to me what the rules and regulations are for CPUC's PUBLIC GOODS monies, but we believe that this continuing action by Masco/Energy Sense inspection of their own installations and then the certifying of California Energy Star Homes is in conflict with the intent of public goods monies distribution. How may a company certify an California Energy Star Home where window values verifications are required when the company that is verifying that measure is the same company that owns the window manufacturing and the installation companies, where public goods monies are distributed? This just one example and Masco, as you are aware, owns not only window companies by insulation and insulation installation companies.

While I have heard many incidents of reported Masco violations, I do have firsthand knowledge of improper business solicitation as you described in your letter dated May 15, 2007. While attending a meeting with a builder as an energy consultant, with the Utility representative present, the Energy Sense representative at the meeting, talked about other services that their company offered and could supply to the builder, that was currently not under contract with the builder. In this meeting the Energy Sense representative, clearly stated that Masco/Energy Sense was sanctified by not only the CEC but that they had a letter from Bill Pennington stating their legitimacy, that there was no conflict of interest letter from the CEC to Masco nor a "real or perceived conflict of interest within the scope of Energy Sense operations. The builder asked for the letter to be sent to them concerning Masco/Energy Sense and Bill Pennington letter. I have followed up on that request through the builder but the builder has never received such a letter. This representative (employee) was insistent that their Company was "approved by Bill Pennington, himself.

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If you would like details of this meeting as well as names of attendees and the builder, please feel free to contact me for additional information.

DuctTesters, Inc. is a strong advocate of the "third party" inspection process. We have been in the RNC market for many years and seen the need for accurate verification, as the CEC has deemed appropriate. We have all experience the "good intention" installations that were and still are a part of our industry. The "third party" system, implemented by the CEC in the lasts ten years has shown that it is working and the energy savings is real and measurable. In just this short time frame, as an example, who would of thought "tight ducts" would be a standard feature of an HVAC company's installation?

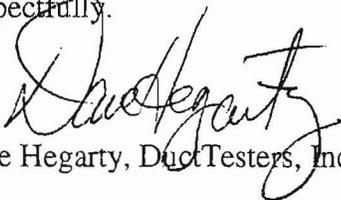
It is in the best interest of California and its citizens that the "third party" inspection system and processes remain, as intended and as Title 20 clearly states, without financial interest in the work or project that is being rated. We therefore ask that the CEC investigate and determine if a violation of the Conflict of Interest rules under Title 20 are being Violated by Masco/Energy Sense and if so take immediate action to remedy the situation, as we believe is their obligation and responsibility.

DuctTesters, Inc. has also asked that an investigation of this possible violation be conducted by the Provider that certified Masco/Energy Sense. A formal request was make more than 90 day ago without conclusion. We believe, as we interpreted from our meeting with you on March 12, 2008, that CHEERS has responsibility in this situation to investigate and act without hast to review and react to any violation that is brought to their attention as to "conflict of interest" rules. We have asked CHEERS for a formal complaint process to be sent to us to further this request and to conclude the matter as to, conflict of interest and rater violations of Masco employees. CHEERS has specific complaints and witnessed incidents, reported to them as to Masco/Energy Sense actual rating procedures . I would like to know that these have been investigated and what the outcome was, as well as remedy.

DuctTesters, Inc. and it's Employees are asking the CEC to protect the "conflict of interest" rules, Title 20 and the California consumers from violations and continued lack of response from Masco/Energy Sense to respond to CEC legal staff. California citizens are paying a hefty toll for their State sponsored energy programs and Public Goods monies. They should have the confidence that their investment in the future energy savings is real and Credible.

Please uphold the intention of Title 20 and the "Third Party" verification process and find Masco/Energy Sense in violation, and provide the necessary protection that the people of California deserve.

Respectfully,



Dave Hegarty, DuctTesters, Inc.

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**DuctTesters Inc.  
P.O. Box 266  
Ripon CA 95366**

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**California Energy Commission  
Dennis L. Beck Jr., Esq.  
1516 Ninth Street, MS-14  
Sacramento, California 95814**

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# APPENDIX 2

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

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

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

Energy Inspectors  
Attn: Galo LeBron, CEO  
1036 Commerce Street, Suite B  
San Marcos, CA 92078

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

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

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

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

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

# APPENDIX 3

~~(e) A copy of the order adopted pursuant to Section 1222 of these regulations shall accompany the initial notice prepared and mailed pursuant to this section, unless a copy of the order has been previously mailed to those persons who would receive such notice.~~

~~Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25210, Public Resources Code.~~

**~~§ 1224. Use of Testimony.~~**

~~(a) The commission, or a committee thereof, may require by order instituting hearings, prehearing conference order, or other proper notice that evidence on specified issues of fact or matters of technical expertise be presented as sworn testimony. Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding.~~

~~(b) The presiding member may require that prepared written testimony or other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly consideration of issues at the hearing.~~

~~Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.~~

**~~§ 1225. Questioning.~~**

~~(a) Questions from commissioners or staff are in order at any time. At the close of an oral statement, the presiding member may allow other persons to question a witness or person presenting a statement; provided, however, that persons not submitting sworn testimony shall not be compelled to answer such additional questions without their consent.~~

~~(b) The presiding member may, at his discretion, limit the time and scope of oral questioning.~~

~~Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.~~

## **Article 4. Complaints and Investigations**

**§ 1230. Scope.**

(a) Complaint proceedings shall include any adjudicatory proceeding in which the commission determines whether to sanction, or take other appropriate action against, a person for an alleged violation of any statute, order, decision, or regulation adopted, administered, or enforced by the commission, including but not limited to a proceeding pursuant to Public Resources Code section 25534.1. Investigation proceedings shall include any adjudicatory proceeding in which the commission determines the applicability of any statute, order, decision, or regulation adopted, administered, or enforced by the commission. A single proceeding may involve both a complaint and an investigation.

(b) Standing committees to exercise the complaint or investigatory functions of the commission may be established pursuant to Section 1204(a). The order establishing a committee shall designate the area of commission jurisdiction over which a committee shall exercise the complaint or investigatory function.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

**§ 1231. Complaints and Requests for Investigation; Filing.**

Any person, including but not limited to the commission staff or the owner or operator of a powerplant or transmission line, may file a complaint alleging a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. Any complaints alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 et seq. must be filed solely in accordance with section 1237. Any person may also file a request for investigation, including a request for a jurisdictional determination regarding a proposed or existing site and related facilities.

(a) A complaint or request for investigation shall be filed with the Chief Counsel of the commission.

(b) The complaint or request for investigation shall include:

(1) the name, address, and telephone number of the person filing the complaint (complainant) or request for investigation (petitioner);

(2) the name, address, and telephone number of the person allegedly violating the statute, regulation, order, or decision (respondent) or, in the case of a request for a jurisdictional investigation, the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the request for investigation (respondent);

(3) a statement of the facts upon which the complaint or request for investigation is based;

(4) a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based;

(5) the action the complainant or petitioner desires the commission to take;

(6) the authority under which the commission may take the action requested;

(7) a statement by the complainant or petitioner specifically listing the names and addresses of any other individuals, organizations, and businesses which the complainant or petitioner knows or has reason to believe would be affected by the relief sought; and

(8) a declaration under penalty of perjury by the complainant or petitioner attesting to the truth and accuracy of any factual allegations contained in the complaint or request for investigation. If any of the applicants are corporations or business associations, the declaration shall be dated, signed, and attested to by an officer thereof. Where a declaration is filed on behalf of a joint venture or proposed joint venture, all members of the joint venture or proposed joint venture shall date, sign, and attest to the declaration.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

**§ 1232. Complaints and Requests for Investigation; Commission Response.**

(a) Within 30 days after the receipt by the Chief Counsel of a complaint or request for investigation, the committee, or if none has been assigned, the chairman, shall:

(1) dismiss the matter upon a determination of insufficiency or lack of merit of the pleadings, specifying whether the dismissal is with or without prejudice; or

(2) serve the complaint or request for investigation by certified mail, return receipt requested, upon the respondent. All other persons identified in Section 1231(b)(7) shall be served by first class mail. In addition, the committee, or if none has been assigned, the chairman, may take additional steps to notify other individuals, organizations, and businesses which the committee or the chairman has reason to believe would be adversely affected by a decision. When serving the complaint, the committee, or if none has been assigned, the chairman, shall also provide a copy of the commission's governing procedure, including a statement whether the provisions of Government Code section 11400 et seq. are applicable to the proceeding.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

**§ 1233. Answers to Complaints and Requests for Investigation.**

(a) The respondent shall file and serve an answer with the complainant or petitioner, the commission, and all persons identified in Sections 1231(b)(7) and 1232(a)(2) within 21 days after service of the complaint or request for investigation pursuant to Section 1232(a)(2).

(b) The answer shall include:

(1) an admission or denial of each material allegation;

(2) an explanation of any defenses raised by the respondent; and

(3) a declaration as provided in Section 1231(b)(8).

(c) Where the petitioner seeks clarification of the jurisdictional status of its own project, no answer shall be required.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

### **§ 1233.5. Staff Assessment.**

If the entity filing the complaint or request for investigation is other than the commission staff, the committee, or if none has been assigned, the chairman, may direct commission staff to prepare a written assessment of the complaint or request for investigation and the answer. The staff assessment shall be filed and served by first class mail on complainant or petitioner, the commission, and all persons identified in Sections 1231(b)(7) and 1232(a)(2) within 7 days of service of the answer provided pursuant to Section 1233.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

### **§ 1234. Notice and Hearing.**

(a) The hearing shall be scheduled to commence no sooner than 21 days after receipt of the answer and no later than 90 days after the receipt by the General Counsel of the complaint or request for investigation. The hearing may be scheduled before the full commission, a committee designated by the commission, or a hearing officer assigned by the chairman at the request of the committee as provided in Section 1205.

(b) The commission shall provide written notice by first class mail to all petitioners, respondents and persons identified in Sections 1231(b)(7) and 1232(a)(2) no fewer than 14 days before the first hearing on the matter. The notice shall contain:

(1) the names and addresses of all named complainants, petitioners, and respondents;

(2) a statement concerning the nature of the complaint or request for investigation, with an identification of the statute, regulation, order, or decision at issue;

(3) an explanation of the action the commission may take;

(4) the date, place, and time of any hearing in the matter; and

(5) a statement concerning the availability of the public adviser.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

### **§ 1235. Proposed Decision.**

If the matter is heard before an assigned committee or hearing officer, appointed pursuant to Section 1205, the committee or hearing officer shall make its recommendation to the full commission in the form of a written proposed decision within 21 days following the close of hearings held pursuant to Section 1234.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

## **§ 1236. Commission Decision.**

(a) Upon consideration of a proposed decision from a committee or hearing officer, the commission shall, to the extent reasonably possible, prepare a decision within 21 days of the filing of the proposed decision that:

- (1) adopts, modify, or reject the proposed decision; or
- (2) remands the matter to the committee or hearing officer for further hearings; or
- (3) reopens the evidentiary record and itself conduct further hearings.

(b) When considering a proposed decision from a committee or hearing officer, the commission may limit presentations by all participants to written and oral submissions based upon the existing evidentiary record.

(c) In cases where the commission, rather than a committee or hearing officer hears the case, to the extent reasonably possible, the commission shall make a decision within 21 days following the close of hearings.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

## **§ 1236.5. Public Participation and Intervention.**

To the extent deemed relevant by the presiding member, any person may testify or comment during a complaint or investigatory hearing. A person may request to become a formal party by intervening by following the procedures identified in Section 1207.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

## **§ 1237. Post-Certification Complaints.**

(a) Any person must file any complaint alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 and following solely in accordance with this section. All such complaints shall be filed with the Docket Unit and submitted to the designated compliance project manager for investigation and shall include the following information:

- (1) the name, address, and telephone number of the person filing the complaint (complainant);
- (2) the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the complaint;
- (3) a statement of facts upon which the complaint is based;

(4) a statement indicating the statute, regulation, order, decision, or condition of certification upon which the complaint is based;

(5) the action the complainant desires the commission to take;

(6) the authority under which the commission may take the action requested, if known; and

(7) a declaration under penalty of perjury by the complainant attesting to the truth and accuracy of the statement of facts upon which the complaint is based.

(b) Upon completion of the investigation of the alleged noncompliance, the commission staff shall file a report with the Docket Unit and with the committee assigned pursuant to section 1204 to hear such complaints, or the chairman if none has been assigned, setting forth the staff's conclusions. The report shall be filed no later than 30 days after the receipt by the designated compliance project manager of the complaint and shall be provided to the complainant, project developer, and other interested persons.

(c) If the commission staff is the complainant, it shall file a report with the Docket Unit and with the appropriate committee, detailing the noncompliance and explaining any steps taken to attempt to remedy the noncompliance. The committee shall act on the report in accordance with subsection (e).

(d) Any person may submit written comments on the complaint or staff report within 14 days after issuance of the staff report.

(e) Within 30 days after issuance of the staff report, the committee shall:

(1) dismiss the complaint upon a determination of insufficiency of the complaint or lack of merit;

(2) issue a written decision presenting its findings, conclusions or order(s) after considering the complaint, staff report, and any submitted comments; or

(3) conduct hearings to further investigate the matter and then issue a written decision.

(f) If either the project owner or the complainant is not satisfied with the committee decision, they may appeal to the full commission within 14 days after issuance of the decision. The commission, within 30 days of receipt of the appeal and at a noticed business meeting or hearing, shall issue an order sustaining the committee's determination, modifying it, overturning it, or remanding the matter to the committee for further hearings.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(b), 25500, 25534, 25534.1, 25900 and 25967, Public Resources Code.

# APPENDIX 4

## Appendix A

### Final Application Evaluation Criteria

1. Resources Development Project	
a. Economic and Employment Benefit .....	(15 points)
b. Demonstration Value .....	(15 points)
c. Payback and Cost Effectiveness .....	(15 points)
d. Proven Extent of the Resource .....	(15 points)
e. Likelihood of Success .....	(15 points)
f. Match Contribution .....	(15 points)
g. Overriding Issue .....	(30 points)
2. Planning Project	
a. Demonstrated Need .....	(15 points)
b. Stimulation of Geothermal Energy Development .....	(15 points)
c. Proven Extent of the Resource .....	(15 points)
d. Public Involvement .....	(15 points)
e. Implementation .....	(15 points)
f. Match Contribution .....	(15 points)
g. Overriding Issues .....	(30 points)
3. Impact Mitigation Project	
a. Documented Impact .....	(15 points)
b. Demonstrated Need .....	(15 points)
c. Availability of Alternatives for Mitigating the Impact .....	(15 points)
d. Match Contribution .....	(15 points)
e. Timeliness .....	(15 points)
f. Likelihood of Success .....	(15 points)
g. Overriding Issues .....	(30 points)

### Article 8. California Home Energy Rating System Program

#### § 1670. Scope.

These regulations establish the California Home Energy Rating System Program pursuant to Public Resources Code Section 25942, including procedures for the training and certification of raters, and a certification program for home energy rating system organizations (herein referred to as providers) and for home energy rating services (herein referred to as rating systems). These regulations apply only to field verification and diagnostic testing services pursuant to Chapter 7 of the ACM Manual for demonstrating compliance with Title 24 building energy performance standards. Regulations for other home energy rating services will be addressed in a subsequent rulemaking proceeding. Until the subsequent rulemaking is concluded, home energy rating system services other than field verification and diagnostic testing are not required to be certified.

Note: Authority cited: Sections 25213 and 25942, Public Resources Code. Reference: Sections 25213 and 25942, Public Resources Code.

**§ 1671. Definitions.**

For the purposes of these regulations, the following definitions shall apply:

ACM Manual means *the Low-Rise Residential Alternative Calculation Method Approval Manual* (Energy Commission Publication No. P-400-98-003) adopted in Section 10-109(b)(2) of Title 24, Part 1 of the California Code of Regulations.

Certified, as to a provider and rating system, means having successfully completed the certification requirements as specified by Section 1674.

Commission means the State of California Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.

Financial Interest means 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.

Independent Entity means 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, firms or persons specified in Section 1673(i).

Note: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors.

Provider means an organization that administers a home energy rating system in compliance with these regulations (referred to as a "home energy rating service organization" in Section 25942 of the Public Resources Code).

Rater means a person performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards, who is listed on a registry in compliance with Section 1673(c).

Rating means a representation on a 0 to 100 scale of the annual source energy efficiency of a home, as specified in Section 1672(c).

Rating System means the materials, analytical tools, diagnostic tools and procedures to produce home energy ratings and provide home energy rating and field verification and diagnostic testing services (referred to as "home energy rating services" in Section 25942 of the Public Resources Code).

Service Water Heating means service water heating as defined in Section 101(b) of Title 24, Part 6 of the California Code of Regulations.

Source Energy means source energy as defined in Section 101(b) and calculated as specified in Section 102 of Title 24, Part 6 of the California Code of Regulations.

Note: Authority cited: Sections 25213 and 25942, Public Resources Code. Reference: Sections 25213 and 25942, Public Resources Code.

**§ 1672. Requirements for Rating Systems.**

(a) Rating Site Inspections and Diagnostic Testing. Each rating shall be based on a site inspection of the home, and diagnostic testing as specified by the rating system. Each rating system shall have documented procedures for site inspection and diagnostic testing of rated homes.

(b) Energy Uses Rated. Each rating system shall rate the total combined energy efficiency of the following energy uses of each home rated:

- (1) space heating;
- (2) space cooling; and
- (3) service hot water.

(c) Rating Scale. Each rating system shall rate the annual source energy efficiency of homes on a scale of 0 to 100. The rating shall be for the combined total of the three energy uses described in Section 1672(b).

(d) Field Verification and Diagnostic Testing. The provider and rater shall provide field verification and diagnostic testing of energy efficiency improvements as a condition for those improvements to qualify for Title 24 building energy performance standards compliance credit, as required by Chapter 7, Appendix F, and Sections 3.8.3 and 3.9 of the ACM Manual. Providers and raters shall not knowingly provide untrue, inaccurate or incomplete field verification or diagnostic testing information or report field verification or test results that were not conducted in compliance with these regulations. Providers and raters shall not knowingly accept payment or consideration in exchange for reporting a rating or field verification and diagnostic test result that was not in fact conducted and reported in compliance with these regulations.

Note: Authority cited: Sections 25213 and 25942, Public Resources Code. Reference: Sections 25213 and 25942, Public Resources Code.

**§ 1673. Requirements for Providers.**

(a) Training and Certification Procedures for Raters. Each provider shall conduct the following rater training and certification procedures.

(1) Each provider's training program shall include classroom and field training for rater applicants in analysis, theory and practical application in at least the following areas:

- (A) home energy consumption and efficiency data collection, organization and analysis;
- (B) principles of heat transfer;
- (C) building energy feature design and construction practice, including construction quality assurance and "house as a system" concepts;

- (D) safety practices relevant to home energy auditing procedures and equipment;
  - (E) home energy audit procedures;
  - (F) energy efficiency effects of building site characteristics;
  - (G) types and characteristics of space heating, space cooling, service hot water and hard wired lighting systems;
  - (H) mathematical calculations necessary to utilize the rating system;
  - (I) the function and proper use of diagnostic devices including but not necessarily limited to: duct leakage testing equipment, blower doors and air flow and pressure measurement devices;
  - (J) construction types, equipment types and their associated energy efficiency ramifications;
  - (K) field verification and diagnostic testing requirements of Chapter 7, Appendix F, and Sections 3.8.3 and 3.9 of the ACM Manual; and
  - (L) California Home Energy Rating System Program requirements specified in these regulations.
- (2) The training shall include thorough instruction in the use of the provider's rating system.
- (3) The training shall require rater applicants to satisfactorily perform field verification and diagnostic testing for at least two homes in the presence and under the direct supervision of the provider's trainer. The provider shall review and approve this field verification and diagnostic testing for accuracy and completeness.
- (4) The provider shall require each rater applicant to take a written and practical test that demonstrates his or her competence in all subjects specified in Section 1673(a)(1). The provider shall retain all results of these tests for five years from the date of the test.
- (5) Each provider may establish a Commission-approved challenge test that evaluates competence in each area addressed by the provider's training program. If a rater applicant successfully passes this challenge test, the provider may waive the classroom training requirement and the written and practical test requirements for that applicant. An applicant who passes this challenge test must also successfully meet the requirements specified in Section 1673(a)(3).
- (b) Rater Agreements. As a condition of rater registry under Section 1673(c), each provider shall ensure that a rater applicant who has met the requirements of Section 1673(a) has entered into an agreement with the provider to provide home energy rating and field verification and diagnostic services in compliance with these regulations. The agreement shall require raters to:
- (1) provide home energy rating and field verification services in compliance with these regulations;

(2) provide true, accurate, and complete ratings, field verification and diagnostic testing; and

(3) comply with the conflict of interest requirements as specified in Section 1673(i).

(c) Rater Registry. As a condition of rater registry, each provider shall certify to the Commission that a rater applicant has met the requirements of Section 1673(a) and entered into an agreement meeting the requirements of Section 1673(b). The provider shall maintain a registry of all raters who meet these requirements, provide an electronic copy of the registry to the Commission, and make that registry available in printed or electronic form upon written request.

(d) Field Verification and Diagnostic Testing Data Collection. Each provider shall collect and maintain for a period of five years, the following information for each home for which field verification and diagnostic testing service is provided:

(1) *Certificates of Field Verification and Diagnostic Testing;*

(2) *Certificates of Compliance;*

(3) *Installation Certificates;* and

(4) Other reports made pursuant to Chapter 7 of the ACM Manual.

Alternatively, the information contained in these documents may be collected and stored electronically as long as all of the content and certification signatures from the specified documents are retained.

(e) Field Verification and Diagnostic Testing Evaluation. Providers shall maintain a database of the information specified in Section 1673(d) for a minimum 10% random sample of the homes actually field verified and diagnostically tested annually, or 500 such homes annually, whichever is less. Each provider shall provide this information annually in electronic form to the Commission for evaluating the effectiveness of field verification and diagnostic testing. To the extent that the Commission makes this information public, it will do so only in aggregated form. All of this information shall be organized according to climate zones as defined in Section 101(b) of Title 24, Part 6 of the California Code of Regulations.

(f) Data Submittal. Upon the Commission's request, but not more frequently than annually, a provider shall submit to the Commission the total of the number of homes for which field verification and diagnostic testing services were provided since the last data submittal, and a report of the following information for each home for which field verification and diagnostic testing service was provided:

(1) the energy efficiency improvements field verified and diagnostic tested;

(2) whether or not the builder chose to include the home in a sample for field verification and diagnostic testing as specified in Section 7.4 of the ACM Manual;

(3) whether or not initial field verification and testing as specified in Section 7.4.1 of the ACM Manual was conducted on the home;

(4) whether or not the home in a sample was actually selected and field verified and diagnostically tested as specified in Section 7.4.2 of the ACM Manual;

(5) whether or not the home in a sample was actually selected for resampling and field verified and diagnostically tested after a sampling failure was found in the sample as specified in Section 7.4.3 of the ACM Manual;

(6) whether or not the home in a sample was field verified and diagnostically tested and corrective action was taken after a resampling failure was found in the sample as specified in Section 7.4.3 of the ACM Manual;

(7) whether or not the homeowner declined to have field verification, diagnostic testing and corrective action taken after occupancy as specified in Section 7.4.3 of the ACM Manual.

All of this information shall be organized according to climate zones as defined in Section 101(b) of Title 24, Part 6 of the California Code of Regulations. To the extent the Commission makes this information public, it will do so only in an aggregated form.

(g) Training Materials Retention. Each provider shall retain for at least five years after the last date they are used at least one copy of all materials used to train raters.

(h) Quality Assurance. Each provider shall have a quality assurance program that provides for at least the following:

(1) Initial review. The provider shall review and approve for accuracy and completeness the field verification and diagnostic testing documentation for at least the first five homes which a rater performs after completion of the requirements specified in Section 1673(a)(1), (2) and (3), not including those homes field verified and diagnostically tested under the provider's direct supervision as specified in Section 1673(a)(3).

(2) Field checks of raters. For each rater, the provider shall annually evaluate the greater of one home or one percent of the rater's annual total of homes for which field verification and diagnostic testing services were provided. The provider shall independently repeat the field verification and diagnostic testing to check whether field verification and diagnostic testing was accurately completed by the rater, and determine whether information was completely collected and reported as required by Chapter 7 of the ACM Manual.

(3) Complaint response system. Each provider shall have a system for receiving complaints. The provider shall respond to and resolve complaints related to ratings and field verification and diagnostic testing services and reports. Providers shall ensure that raters inform purchasers and recipients of ratings and field verifications and diagnostic testing services about the complaint system. Each provider shall retain all records of complaints received and responses to complaints for five years after the date the complaint is presented to the provider.

(i) Conflict of Interest.

(1) Providers shall be independent entities from raters who provide field verification and diagnostic testing.

(2) Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.

Note: Authority cited: Sections 25213 and 25942, Public Resources Code. Reference: Sections 25213 and 25942, Public Resources Code.

**§ 1674. Certification of Providers and Rating Systems.**

(a) Application. A person or entity wishing to be certified as a provider and wishing to have a rating system certified shall submit four copies of an application to the Commission. The application shall contain:

(1) a complete copy of all field verification and diagnostic testing procedures, manuals, handbooks, rating system descriptions, and training materials;

(2) a detailed explanation of how the rating system meets each requirement of Section 1672;

(3) a detailed explanation of how the provider meets each requirement of Section 1673;

(4) the name, address, and telephone number of the provider and a statement of where its principal place of business is and where and upon whom service of legal process can be made;

(5) upon Commission request, if the provider is a corporation, a copy of the articles of incorporation and the current by-laws;

(6) if the provider is a partnership, the names, addresses, telephone numbers, and partnership status (for example, general, managing) of all the partners, and a copy of the current partnership agreement;

(7) the names, addresses, telephone numbers, and business relationships of all the provider's owners, parents, subsidiaries, and affiliates;

(8) a statement that ratings are accurate, consistent and uniform, utility bill estimates are reasonable, and recommendations on cost-effective energy efficiency improvement measures are reliable;

(9) a statement that the provider understands and will not knowingly fail to comply with the requirements of these regulations; and

(10) a statement under penalty of perjury that all statements in the application are true, provided in the form specified by Section 2015.5 of the Code of Civil Procedure.

(b) Confidentiality of Information. Any provider who submits the required application information and wishes to have that information treated as confidential in order to limit its disclosure shall, at the time of submitting the information, apply for a confidential designation as specified in Section 2505 of Title 20 of the California Code of Regulations.

(c) Commission Consideration.

(1) The Commission's Executive Director may request additional information from the applicant necessary to evaluate the application.

(2) The Executive Director shall provide a copy of its evaluation to interested persons.

The Executive Director may convene a workshop to receive comments from interested persons.

(4) Within 90 days of receiving the complete application, the Executive Director shall send to the Commission and to the applicant a written recommendation that the Commission certify the provider and its rating system or deny that certification.

(5) The Executive Director shall recommend certifying the provider and rating system if it finds the following:

(A) the rating system meets all of the requirements of Section 1672; and

(B) the provider meets all of the requirements of Section 1673.

(6) The Commission shall act on the recommendation at its next regularly scheduled Business Meeting that is at least fifteen days after the date that the recommendation was mailed to the applicant.

(7) The Commission shall certify the proposed provider and rating system if it confirms the Executive Director's findings in Section 1674(c)(5).

(8) Upon certification the Commission shall assign the provider a three-digit identification number.

(d) Re-certification. A certified provider shall notify the Commission whenever any change occurs in any of the information, documentation, or materials, the provider submitted to the Commission under Section 1674(a), and shall submit the changed information to the Commission. Where this changed information could affect the provider's compliance with these regulations, the Commission may require that the provider and the rating system be re-certified under the process described in Section 1674. The Executive Director may waive re-certification for non-substantive changes. The Commission may also require that providers and rating systems be re-certified if the requirements of these regulations are amended or modified.

Note: Authority cited: Sections 25213 and 25942, Public Resources Code. Reference: Sections 25213 and 25942, Public Resources Code.

**§ 1675. Review by the Commission.**

(a) Annual Review. The Commission may annually review the performance of providers certified under Section 1674 to determine whether the providers comply with the requirements of these regulations. This review may include interviewing recipients of ratings and field verification and diagnostic testing services and reports on a voluntary basis.

(b) Complaint Proceedings. Any person or entity may file a complaint concerning any violation of these regulations as provided for in Section 1230 et. seq. of Title 20 of the California Code of Regulations. The Commission may, for good cause, conduct an investigation and, if necessary, hearing, under the procedures established in Section 1230 et. seq. of Title 20 of the California Code of Regulations.

Each provider shall provide all information requested by the Commission regarding any annual review or complaint proceeding.

(c) Commission Determination. If the Commission determines there is a violation of these regulations or that a provider is no longer providing rating, field verification and diagnostic testing services, the Commission may revoke the certification of the provider pursuant to Section 1230 et. seq. of Title 20 of the California Code of Regulations.

Note: Authority cited: Sections 25213 and 25942, Public Resources Code. Reference: Sections 25213 and 25942, Public Resources Code.

## **~~Chapter 5. Site Certification~~**

### **~~Article 1. General Provisions Applicable to Notices and Applications~~**

#### **~~A. Scope and Definitions~~**

##### **~~§ 1701. Scope of Regulations.~~**

~~(a) Unless otherwise stated, the provisions of Article 1 of this chapter shall apply to the consideration of all notices and applications for any site and related facility within the jurisdiction of this commission.~~

~~(b) The provisions of Article 2 of this chapter shall apply to the consideration of all notices except as provided in Article 4.~~

~~(c) The provisions of Article 3 of this chapter shall apply to the consideration of all applications for certification except as provided in Article 4.~~

~~(d) The provisions of Article 4 of this chapter shall apply to the consideration of all geothermal notices and applications for certification.~~

~~(e) The provisions of Article 5 of this chapter shall apply to the consideration of all applications for a Small Power Plant Exemption.~~

~~(f) The provisions of Article G of this chapter shall apply to the consideration of all powerplant and transmission line jurisdictional determinations.~~

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25541.5, Public Resources Code.

# APPENDIX 5

## **Chapter 2. Rules of Practice and Procedure**

### **Article 1. Commission Meetings**

#### **§ 1101. Scope.**

This article only applies to meetings conducted under Public Resources Code Section 25214.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1102. Meetings – Scheduling.**

(a) The commission shall meet at least once every month.

(b) The time and place of meetings may be set by resolution of the commission, by written petition of a majority of the members, or by written call of the chairman. The chairman may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1103. Notice and Agenda.**

(a) Time and Distribution. Notices shall be given to all members, ex officio members, the public adviser, to all parties to proceedings on the agenda, and to all persons who request in writing such notice.

(b) Agenda. The agenda shall be prepared by the executive director and shall include any item proposed by any member, the public adviser or the executive director.

(c) Emergencies. In all public emergency cases, every member and ex officio member and the public adviser shall be notified in person, by telephone, or by telegram.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25214 and 25217(a), Public Resources Code; and Section 11125, Government Code.

#### **§ 1104. Meetings.**

(a) Presiding Member. The chairman shall preside over all meetings of the commission at which he is present. In his or her absence, the vice chairman shall preside. If neither the chairman nor the vice chairman is in attendance, the member present who has the greatest seniority on the Commission shall preside. The presiding member may yield the chair.

(b) Robert's Rules of Order. Except as otherwise provided by this article and except when all the members present indicate otherwise, meetings of the commission shall be conducted pursuant to the latest edition of Robert's Rules of Order. Failure to comply with this subsection shall not invalidate any action of the commission.

(c) Order of Agenda. The presiding member may determine the order in which agenda items shall be considered.

(d) Consent Calendar. The agenda may include an item designated "the consent calendar."

(1) The consent calendar shall include only those matters for which there appears to be no controversy. The consent calendar shall contain any such matter specified for inclusion by the person proposing the agenda item. A brief description of each matter on the consent calendar shall be included in the agenda.

(2) At the request of any member, any matter shall be removed from the consent calendar and may be considered at the same meeting as a separate item of business.

(3) After an opportunity for the requests to remove matters from the consent calendar has been given, a vote shall be taken on the consent calendar. If three members vote to approve the consent calendar, each matter on the consent calendar shall be approved and shall have the same force and effect as it would have if approved as a separate agenda item.

(e) Public Comments. Any person may submit comments in writing on any agenda item. Any person submitting such comments shall, if possible, provide the commission with either twelve paper copies of such comments, or one paper copy and electronic copies in the number, media and format specified in Section 1209.5 in advance of the meeting at which it is to be considered.

Any person present and so desiring shall be given an opportunity to make oral comments on any agenda item; provided however, that the presiding members may limit or preclude such comments as necessary for the orderly conduct of business.

Note: Authority cited: Section 25218, Public Resources Code. Reference: Section 25214, Public Resources Code.

#### **§ 1105. Permanent Record.**

(a) The commission shall keep minutes of its meetings. Minutes shall be approved by the full commission and, upon approval, shall be signed by the chairman or other person designated by the chairman. Signed minutes shall be the original evidence of actions taken at any meeting, including the text of any resolutions adopted.

(b) Commission public meetings shall be recorded by stenographic reporter or electronic recording or both. The transcripts or recordings shall be kept at least one year and shall be available to the public for review at the commission's main office and such other offices as the commission may designate.

(c) Any person may photograph or record any public meeting of the commission so long as it does not disrupt the orderly conduct of business.

(d) Any person may petition the commission to correct a transcript of his own statements. Such petition shall be made within sixty days after the transcript has been made available to the public at the commission's main office. The commission shall consider any such petition as an item on the consent calendar pursuant to Section 1104(c) of these regulations.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

**§ 1200. Scope.**

Except as otherwise specifically indicated, the provisions of this article shall apply to all proceedings and hearings held before the commission or a committee thereof.

Note: Authority cited: Sections 25218(e) and 25218(f), Public Resources Code. Reference: Section 25214, Public Resources Code.

**§ 1201. Definitions.**

The following definitions shall apply unless otherwise indicated:

(a) "Staff" means the staff of the State Energy Resources Conservation and Development Commission.

(b) "Respondent" means any person named in a complaint, pursuant to Section 1231 of these regulations, and alleged to be in violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission, and any person who is the subject of a complaint proceeding pursuant to Sections 1230 and 1231 of these regulations.

(c) "Complainant" means any person who files a complaint, pursuant to section 1231 of these regulations, alleging the violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission.

(d) "Intervenor" means any person who has been granted leave to intervene pursuant to these regulations.

(e) "Party" means any applicant, respondent, complainant, or intervenor, and the staff of the commission.

(f) "Presiding member" means the chairman of the commission or any member of the commission designated to preside over any proceeding pursuant to Section 1204 of these regulations.

(g) "Comment" means any oral or written statement made by any person, not under oath, in any proceeding before the commission.

(h) "Testimony" means any oral or written statement made under oath in any proceeding before the commission.

(i) "Witness" means any person who offers testimony in any proceeding before the commission.

(j) "Docket Unit" means the Docket Unit of the Energy Resources Conservation and Development Commission.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

**§ 1202. Right of Any Person to Comment.**

(a) Any person present and so desiring shall be given an opportunity to make oral comments on the subject matter of a proceeding; provided, however, that the presiding member may limit such comments as necessary for the orderly conduct of business. Except as otherwise provided, persons desiring to make oral comments are encouraged to notify the presiding member or the public adviser at least two (2) days prior to the hearing at which such comments are to be made.

(b) Any person desiring to submit written comments to the commission concerning the subject matter of a proceeding shall submit copies of such comments pursuant to Section 1209 of these regulations. Persons are encouraged to submit such comments at least five (5) days prior to the hearing, unless otherwise provided by order. Written comments shall be filed with the Docket Unit of the Energy Resources Conservation and Development Commission; provided, however, that during the actual conduct of a hearing, written comments may be filed with the presiding member.

COMMENT: The right to comment is not the limit of public participation in commission proceedings. For example, Section 1226 of these regulations provides the opportunity for persons to submit sworn testimony on specified issues in rulemaking and informational hearings, while Section 1227 provides a mechanism whereby persons interested in a proceeding may be permitted to ask or answer additional questions either orally or in writing. In addition, in those proceedings requiring greater formality, and in all adjudicatory proceedings, the commission permits intervention in the proceeding.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

**§ 1203. Powers of the Chairman.**

In addition to all other powers conferred by this article, the chairman or presiding member designated pursuant to Section 1204 shall have the power to:

(a) Request and secure such information as is relevant and necessary in carrying out the purposes of the proceeding.

(b) Issue subpoenas and subpoenas duces tecum at the direction of the commission, on his motion or upon application of any party. The application of a party shall be supported by a declaration of good cause.

(c) Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, admitting or excluding evidence, receiving exhibits, designating the order of appearance of persons making oral comments or testimony, and continuing the hearings.

(d) Set the time and place of hearings.

(e) Cancel a scheduled hearing or meeting. To the extent feasible, notice shall be given of any cancellation and the staff in consultation with the public adviser shall inform known interested participants by the most expeditious means possible.

(f) For good cause shown, and upon proper notice, shorten or lengthen the time required for compliance with any provision of these regulations.

Note: Authority cited: Sections 25213 and 25539, Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1204. Designation of Committees and Presiding Member; Quorum.**

(a) Committees shall be designated in accordance with Public Resources Section 25211. During committee proceedings a presiding member shall exercise the powers and duties conferred on the chairman by this article.

(b) A quorum of a committee is one member.

(c) The commission may at any time withdraw any matter from a committee to allow consideration of the matter by the full commission.

(d) If a presiding member is unavailable during any portion of the proceedings, he may delegate his responsibilities to the second member of the committee.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.

**§ 1205. Designation of Hearing Officer; Responsibilities.**

The chairman may designate a hearing officer to assist a committee in the conduct of any proceeding held pursuant to this Division.

The Commission may authorize a hearing officer to preside over proceedings held pursuant to this Division, except for site certification proceedings pursuant to Chapter 5, Articles 1 through 5 of these regulations, Biennial Report proceedings, and rulemaking proceedings. In site certification proceedings pursuant to Chapter 5, Articles 1 through 5, of these regulations, a hearing officer may take evidence in the temporary absence of a Commission member as provided in Public Resources Code section 25211.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25211 and 25217, Public Resources Code.

**§ 1206. Representatives.**

Any person may designate any other person, except those prohibited by Section 25205(d), Public Resources Code, to represent him or her for any purpose under this subchapter.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25205(d), Public Resources Code.

**§ 1207. Intervenor.**

(a) Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

(b) In a power plant siting case, the petition shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this Chapter, whichever is earlier, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

(d) Any petitioner who has been denied leave to intervene by the presiding member may appeal the decision to the full commission within fifteen (15) days of the denial. Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.

(e) Any petitioner may withdraw from any proceeding by filing a notice to such effect with the Docket Unit or presiding committee member.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

**§ 1208. Conferences; Purpose; Notice; Order.**

The presiding member or hearing officer may hold a conference with the parties, the public adviser, the chief counsel, and any other persons interested in the proceeding, at any time he deems necessary, for the purpose of formulating the issues, organizing the questioning of witnesses, determining the number of witnesses, providing for the exchange of exhibits or prepared statements, and such other matters as may expedite the orderly conduct of the proceedings. The public adviser may, upon request, present the views submitted by persons interested in the proceeding who are unable to attend.

(a) The conference shall be publicly noticed and the notice served in person or by mail on all parties at least ten (10) days before the conference.

(b) The presiding member may enter an order which specifies issues or states any other matter to aid in the orderly conduct of the hearing, and may, upon agreement of all the parties, accept stipulations of law or fact.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

**§ 1209. Form of Submissions.**

(a) Except for drawings, photographs, maps, diagrams, charts, graphs, or similar documents and exhibits, all formal paper filings and accompanying materials submitted to the commission pursuant to these regulations shall be typewritten or printed on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long. To the extent possible, all attachments thereto, including drawings, photographs, maps, diagrams, charts, graphs, and similar documents, and all other exhibits, shall be folded to the same size. To the extent possible, no document should be larger than eleven (11) inches wide and seventeen (17) inches long unfolded. Documents should be printed on both sides of the page. Clear, permanently legible copies made by any reproduction process may be submitted. Pages shall be bound securely and shall be consecutively numbered. Formal filings may also be submitted electronically. Electronic copies shall be in the number, media, and format specified in Section 1209.5.

(b) All filings and accompanying materials, including exhibits not attached to other materials, shall show the following on a title page or cover:

- (1) the title of the proceedings before the commission;
- (2) the docket number, if any, assigned by the commission;
- (3) the nature of the material;
- (4) the name, address, and telephone number of the person submitting the material.

(c) Unless otherwise specified in these regulations or required by the commission or the executive director, any person submitting written materials in connection with a proceeding before the commission shall provide twelve (12) paper copies thereof, including one original paper copy. The Docket Unit shall photocopy and distribute submitted material in the normal course. Alternatively, a person may provide one original paper copy and electronic copies in the number, media and format specified in Section 1209.5.

(d) Unless otherwise specified in these regulations all materials filed with the commission shall be filed with the Docket Unit. The executive director shall assure the proper distribution of such materials and shall assure that all materials submitted to the commission shall be made available at the Docket Unit to the public in accordance with provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7, Title 1 of the Government Code, and commission regulations.

(e) Unless otherwise stated in these regulations, in other applicable law, or by order of the commission or a committee thereof, a document is filed, received, or similarly submitted when it is delivered in paper or electronic format to the Docket Unit.

(f) Filing pursuant to this section does not satisfy the requirement that a party serve a copy of its documents on every other party in a proceeding, contained in section 1210.

NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.

**§ 1209.5. Electronic Filing.**

(a) Electronic documents may be submitted in any of the following media in the number of copies specified:

- (1) Two CD-ROMs (read only);
- (2) Two magnetic diskettes;
- (3) One internet e-mail; or
- (4) Any other media and number of copies authorized by the Executive Director.

(b) The format version used must be noted on the media. Charts, graphs, drawings, maps, and photographs should be incorporated within the document, but may be included in an appendix. Maps and photographs may be submitted as paper copies in the number specified by the executive director.

(c) Electronic documents shall be provided in the Portable Document Format (PDF), or its equivalent, as determined by the executive director.

(1) The executive director may waive the format requirement if it is shown to constitute an undue burden on the submitter of a document. A written request for a waiver may be submitted to the executive director at any time prior to the filing of a document. The request shall include a description of each such document and a discussion of the reasons why the format specified in (c) above is an undue burden. The requesting party may not file the electronic document while such a request is pending. If a request is granted, the executive director shall specify the format allowed. The executive director shall act on all such requests within 15 days.

(d) Documents shall be delivered to the Dockets Unit in one of the following ways:

- (1) by personal delivery to the Dockets Unit;
- (2) by electronic transfer (e-mail) of smaller documents (5MB maximum file size) to: [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us);
- (3) by first class mail, or other equivalent delivery service, with postage prepaid; or
- (4) in any other delivery method approved by the Executive Director.

(e) Data the submitter considers confidential must be filed as a separate document with an application for confidential designation pursuant to Section 2505.

NOTE: Authority cited: Sections 25216.5(a) and 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.

**§ 1210. Filing by Parties.**

(a) Unless otherwise provided by the presiding member, a paper copy of all written material filed by any party in a proceeding shall be served in person or by first class mail, or other equivalent delivery service, with postage prepaid, on every other party to the proceeding, except where a party requests an electronic copy when available. Any party so requesting shall be served with an electronic copy in a manner pursuant to section 1209.5 regarding electronic filings.

(b) The Docket Unit shall promulgate and make available a list which shall include the names and addresses of all parties to a proceeding.

(c) Any filing by a party shall include a proof of service in compliance with subsection (a) of this section.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1211. Submission of Exhibits; Filing.**

Any exhibits, including charts, graphs, maps, and other documents relevant to testimony or comments may be submitted to the presiding member at any hearing, or, subject to the discretion of the presiding member, filed with the Docket Unit at any time before the close of the proceeding.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1212. Rules of Evidence.**

The following rules of evidence shall apply to any adjudicatory proceeding of the commission and in such other proceedings as the commission may determine by order.

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant noncumulative evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) Oral or written testimony offered by any party shall be under oath.

(c) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence against such party. Questions of relevance shall be decided by the presiding committee member.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

The presiding member may establish such additional rules as necessary for the orderly conduct of the proceeding.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1213. Official Notice.**

During a proceeding the commission may take official notice of any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state. Parties to a proceeding shall be informed of the matters to be noticed, and those matters shall be noted in the record, or attached thereto. Any party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1214. Record and Transcript.**

The presiding member shall cause a formal record of the proceedings to be made. The record shall consist of the official minutes or a transcript of each hearing or conference held during the proceedings, all pleadings, written testimony, and briefs submitted by any party, any order entered pursuant to Section 1208(b), all questions and answers of witnesses submitted pursuant to Section 1225, any exhibits accepted into the record pursuant to Section 1211, any written comments submitted pursuant to Section 1202(b), and the record of all ex parte contacts filed pursuant to Section 1216 of these regulations, together with such other items as the presiding member may direct. The presiding member may cause a transcript of any conference held pursuant to Section 1208 to be made and entered into the record.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1215. Interlocutory Orders and Appeals.**

(a) During proceedings before a committee, a party may request that a ruling of the committee or presiding member be issued in the form of a written order. Any such request shall be made no later than five calendar days following the ruling.

(b) Any party may petition the full commission to review any order prepared pursuant to subsection (a) of this section. Any such petition shall be filed within ten days of the date of the order being issued; provided, however, that rulings of the presiding member or committee may not be appealed during the course of hearings or conferences except in extraordinary circumstances where prompt decision by the commission is necessary to prevent detriment to the public interest. In such instances, the matter shall be referred forthwith by the presiding member to the commission for determination.

(c) Unless the commission acts upon questions referred by the presiding member to the commission or upon a petition to review an order of the presiding member or committee within thirty (30) days after the referral or filing of the petition, whichever is later, such referrals

or petitions shall be deemed to have been denied. The commission may act by formally denying the petition or by vacating or amending the committee order.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

**§ 1216. Ex Parte Contacts.**

(a) The ex parte provisions of Article 7 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11430.10 et seq.) apply to all adjudicative proceedings conducted by the commission. For purposes of this section "presiding officer" means all commissioners and all hearing advisors.

(b) An adviser to a commissioner or any other member of a commissioner's own staff shall not be used in any manner that would circumvent the purposes and intent of this section.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11430.10 – 11430.80, Government Code, Section 25210, Public Resources Code.

**§ 1217. Informal Hearings.**

The commission may choose to implement the informal hearing procedures identified in Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11445.10 et seq.) when conducting an adjudicative proceeding.

NOTE: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11445.10 – 11445.60, Government Code, Section 25210, Public Resources Code.

**§ 1218. Ex Parte Contacts.**

Note: Specific reference: Section 25500 et seq., Public Resources Code.

**§ 1219. Interim Regulations for Adjudicatory Procedure.**

Note: Authority cited: Section 11400.21, Government Code. Reference: Section 11400.21, Government Code.

**~~Article 3. Rulemaking and Informational Hearings~~**

**~~§ 1220. Scope.~~**

~~(a) "Rulemaking proceedings" shall include any hearings designed for the adoption, amendment, or repeal of any rule, regulation, or standard of general application, which implements, interprets or makes specific any provision of Division 15 of the Public Resources Code or any other statute enforced or administered by the commission.~~

~~(b) "Informational proceedings" shall include any hearings designed to gather and assess information to assist the commission in formulating policies; informing the public of commission actions; or obtaining public comment and opinion.~~