

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.¹

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.

¹ 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.²

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

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