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19 March 2007

B. B. Blevins, Executive Director
California Energy Commission
1516 9th Street MS-39
Sacramento, CA 95814

Subject: ACM Application Status for eQUEST/D2Comply

Dear Mr. Blevins:

The purpose of this letter is to inquire about the status of the James J. Hirsch & Associates (JJH) application to have eQUEST and D2Comply approved as Alternative Calculation Methods (ACMs) for determining compliance with the nonresidential requirements of the 2005 Title 24 Energy Efficiency Standards for Buildings. JJH mailed an ACM application on August 14, 2006; due to subsequent contact with Commission Staff on August 16 we know our application was received by that date. We request, as required by California Code of Regulations Title 24 Part 1 Chapter 10 Article 1 Section 10-110 (Code) as cited below, that you act to place a recommendation on our ACM application onto the Commission's April 11 business meeting consent calendar. The relevant section of the Code, covering the approval of ACMs is as follows (emphasis added):

ARTICLE 1 - ENERGY BUILDING REGULATIONS

SECTION 10-110 - PROCEDURES FOR CONSIDERATION OF APPLICATIONS UNDER SECTIONS 10-104, 10-106, 10-108, AND 10-109

- (a) If the application is complete, the executive director shall make the application available to interested parties. Comments from interested parties must be submitted within 60 days after acceptance of the application.
- (b) **Within 75 days of receipt of an application, the executive director may request any additional information** needed to evaluate the application. If the additional information is incomplete, consideration of the application will be delayed until the applicant submits complete information.
- (c) **Within 75 days of receipt of the application, the executive director may convene a workshop to gather additional information** from the applicant and other interested parties. Interested parties will have 15 days after the workshop to submit additional information regarding the application.

- (d) Within 90 days after the executive director receives the application, or within 30 days after receipt of complete additional information requested under Section 10-110 (b), or within 30 days after the receipt of additional information submitted by interested parties under Section 10-110 (c), whichever is later, the executive director shall submit to the commission a written recommendation on the application.
- (e) The application and the executive director's recommendation shall be placed on the consent calendar and considered at the next business meeting after submission of the recommendation. The matter may be removed from the consent calendar at the request of any person.
- (f) The executive director may charge a fee to recover the costs of processing and reviewing applications.
- (g) All applicants have the burden of proof to establish that their applications should be granted.

We first received an e-mail from Staff on November 27, 2006. By our estimates, we received this e-mail well after the 75 day period during which the Executive Director may request additional information as allowed by Section 10-110(b) of the Code. This e-mail from Staff did not request any additional information, but did inform us that Staff anticipated they would forward a recommendation for approval to be considered at one of the February 2007 business meetings.

Several weeks then passed before Staff contacted us again. Below is a brief timeline and description of interactions with Staff:

- On January 11, 2007, we received, by e-mail, a request for additional information from Staff. We provided the requested information by e-mail on January 24, 2007.
- We received another request for information on February 5, 2007 by phone, to which we responded on February 6.
- That same day, February 6, Staff requested, by e-mail, additional information to which we responded on February 9.
- On March 5, 2007, we received an e-mail from Staff stating that they had drafted a recommendation for approval, but requested that a slight revision be made to the software. In a follow-up phone call, Staff anticipated that the recommendation would be considered by the Commission at their April 11 business meeting. We revised eQUEST and D2Comply and provided revisions to Staff, by e-mail, on March 9, 2007.

We have attempted to contact Staff, by phone and e-mail, since we provided them with the requested updates and additional information. We have had no response or communication from Staff since March 7, 2007. In summary, the Commission has had the application more than seven months, has not responded to any of our recent inquiries and has not followed the timeline required by Section 10-110 of the Code. Therefore, we feel there is no other option but to contact the Executive Director to

request information on the status of our ACM application and also request you immediately act to correct your non-compliance with the Code, cited above, governing the time allocated for review and recommendation regarding approval of ACM applications.

If you have any questions or would like further information on eQUEST and D2Comply, please feel free to call me at 206-834-0002.

Cordially,

A handwritten signature in black ink that reads "Kevin Madison". The signature is written in a cursive, slightly slanted style.

Kevin Madison
Consultant Engineer

cc: Commissioner Arthur H. Rosenfeld, Ph.D.
Bill Pennington
Bruce Maeda
Chris Buntine
Gregg D. Ander
David Jacot
Jeff Hirsch