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Subject: Memorandum of MHARR Meeting with DOE Officials on March 16, 2015

March 24, 2015

Office of General Counsel
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Memorandum for the record
Ex-Parte Communication
U.S. Department of Energy
Meeting – Tuesday, March 16, 2015, 2:30-3:00 P.M.

The purpose of this meeting was to provide additional information to the U.S. Department of Energy (DOE) from the perspective of smaller manufactured housing industry businesses and lower and moderate-income consumers of manufactured housing, regarding the devastating impacts that would result from any DOE energy standard based on a “Term Sheet” developed by a DOE “Working Group” established by the DOE Appliance Standards and Regulation Advisory Committee (ASRAC).

In attendance at the meeting were:
John Bostic, MHARR Chairman
Edward Hussey, MHARR Immediate-Past Chairman
Mark Weiss, MHARR President and CEO
Danny Ghorbani, MHARR Senior Advisor
Dr. Kathleen Hogan
Daniel Cohen
Joseph Hagerman (by telephone)

There was no prepared agenda for the meeting.

The meeting began with introductions of the attendees and then turned to a discussion of the rulemaking procedures leading to the Working Group Term Sheet, which now will reportedly be the basis -- in whole or in part -- for a proposed rule on this matter pursuant to the Energy Independence and Security Act of 2007 (EISA).

MHARR attendees pointed out that federally-regulated manufactured housing, despite its status as the nation’s most affordable non-subsidized housing, is – and has been – regularly targeted by special interests promoting expanded or more stringent regulation that they presume can be more

easily imposed at the federal level on manufactured housing, than on other types of housing that are regulated at the state and/or local level – and energy regulation is no exception.

Thus despite the absence of consumer complaints or significant demands, and despite the ready availability of all types of energy measures and packages as a matter of consumer choice, energy special interests – without any industry participation or involvement in the legislative process -- sought and obtained the EISA directive, which discriminates against federally-regulated manufactured housing by subjecting it to the latest iteration (at any time) of the International Energy Conservation Code (IECC) (currently the 2015 edition, which has not been adopted in any state) while site-built and other homes that are not specifically recognized as affordable housing by federal law are subject to less stringent and less costly earlier versions of the IECC. The EISA formulation, moreover, will exacerbate already devastating cost increases – with the likely exclusion of more than 300,000 households for every \$1,000 increase in retail level cost (based on the only cost-sensitivity data presented to the Working Group) – by constantly moving the regulatory “goalposts,” introducing a level of regulatory uncertainty that will result in further unnecessary regulation-driven price increases.

In addition to these major fundamental issues, the MHARR attendees detailed a DOE rulemaking and rule development process that is – and has been – irretrievably tainted, nearly from the start. The fatal irregularities in the DOE process began with the selective leak (later termed “impermissible” by the DOE Office of General Counsel) to parties in interest. In response to an MHARR request for an investigation at the time, DOE denied any leak. Further in response to an MHARR Freedom of Information Act (FOIA) request seeking copies of all documents related to that leak, including documents to or from leak recipients, DOE denied the existence of any responsive materials.

MHARR, subsequently, in July 24, 2013 comments on a DOE Request for Information, urged DOE to “begin anew, its entire process for the development of this rule from the start.” While MHARR received no response from DOE, it was subsequently disclosed by DOE Office of General Counsel (OGC) that the Office of Management and Budget (OMB) – Office of Information and Regulatory Affairs (OIRA) had similarly instructed DOE to “begin the process anew.” (See, Manufactured Housing Working Group transcript, August 5, 2014 at pp 57-58). Instead of starting the process over from the beginning, however, DOE -- at the written request of the same parties that had received the “impermissibly” leaked draft rule -- began a truncated “negotiated rulemaking” involving a “Working Group” dominated by the same recipients of the “impermissibly” disclosed draft rule and affiliates.

Thus, DOE selectively leaked its draft proposed rule, was caught, denied the leak, denied the existence or relevant documents and then established a sham “negotiated rulemaking” process to deceive OMB and circumvent its “start-over” directive, with the same parties to which it had leaked the initial draft rule -- while failing and refusing to disclose relevant information to other interested parties such as MHARR.

MHARR advised DOE that it views this entire process, from the selective leak of the draft rule, through the “negotiated rulemaking,” as irretrievably tainted, illegitimate and non-transparent in key aspects, including, but not limited to DOE’s refusal to release the full record of its

proceeding and related materials leading to the selective disclosure of the draft proposed rule, as well as any and all statements, comments, documents, or other information received from recipients of the selective leak prior to the establishment of the negotiated rulemaking Working Group, and DOE's failure to produce any responsive documents in response to the FOIA request filed by MHARR with respect to this matter. MHARR, accordingly, called on DOE to halt all activity on this rule and initiate a complete internal investigation of this matter through its Office of Inspector General (OIG).

In addition, MHARR, while reserving its right to object to any rule resulting from the tainted DOE rulemaking process, pointed out that any manufactured housing energy standards based on the Working Group "Term Sheet" would result in unnecessary retail level cost increases to manufactured housing that would total in excess of \$4,600.00 for a single-section manufactured home and over \$5,800.00 for a double-section manufactured home, with consumer payback periods exceeding 20 years. The MHARR representatives pointed out that cost increases of this magnitude, which do not even account for (1) testing costs; (2) enforcement costs; (3) other regulatory compliance costs; (4) and costs attributable to regulatory uncertainty flowing from EISA's directive that manufactured housing standards be based on the latest iteration of the International Energy Conservation Code (IECC), would have devastating consequences for both the industry and lower and moderate-income consumers of manufactured housing. Such negative consequences, moreover, would be totally unnecessary, in that manufactured homebuyers can already access any energy conservation measures they would wish to incorporate in a home as optional features of their own choosing, rather than a one-size-fits-all government mandate.

The meeting adjourned shortly after 3:00 P.M.

Mark Weiss
President and CEO