

Californians for Renewable Energy, Inc. (CARE)

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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:

) Docket No. 99-AFC-3

Application for Certification for the
Metcalf Energy Center [Calpine
Corporation and Bechtel Enterprises, Inc.]

)
) **Nexus of CEC's Certified Regulatory**
) **Program in regards to the Motion for**
) **Reconsideration of a Workshop**
) **on Public Participation on the MEC**

Nexus of CEC's Certified Regulatory Program in regards to the Motion for reconsideration of a workshop on public participation

Along with materials previously provided to the CEC by CARE, copies of which have been submitted to be included in the administrative record for the process being carried out to re-certify the CEC's regulatory program in order to obtain the limited CEQA exemption for duly certified regulatory programs, please add the following in support of our position that the CEC program should not be re-certified because it violates the "CEQA equivalency" requirement and, in addition, violates the public's constitutional right to petition government (i.e., oppose the MEC project) as allowed by the CEQA statutory scheme:

Public participation is a vital component of CEQA, which is primarily a statutory scheme founded on full and good faith disclosure. CEQA requires the decision makers to document and consider the environmental implications of their actions, while at the same time allowing--and requiring--the public to fully and meaningfully participate in the CEQA review process and interact with the decision makers on environmental issues. (See Remy, et al., GUIDE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (10th ed. 1999), pp. 1-4, 27-28.) No restrictions such as the imposition of an administrative litigation process that discourages and curtails public participation are allowed under CEQA. On the contrary, CEQA authority provides that anything that infringes upon this vital public participation component is presumptively prejudicial and requires issuance of a writ mandating the setting aside project approval.

The MEC project also triggers the proposition that CEQA is not merely a "procedural" statutory scheme, like the federal statutory scheme CEQA is modeled after, The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq. "CEQA contains a "substantive mandate" that public agencies refrain from approving projects

with significant environmental effects if `there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects.’” (Remy 10th at pp. 1-2, quoting and citing *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134; CEQA §21002.) Other CEQA authority quoted and cited for these and related propositions include *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233. *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 440-41; Guidelines §§ 15002(a)(3), 15021(a)(2) & (c), 15041(a), 15063(c)(2), 15091(a), 15093, 15126(c) & (d), 15064, 15370.)

A handwritten signature in black ink that reads "Michael E. Boyd". The signature is written in a cursive, slightly slanted style.

Michael E. Boyd – President, CARE 10-9-00