Clerk of the Hearing Board
BAAQMD

DOCKET
04-AFC-1
DATE FEB 27 2006
RECD. FEB 27 2006

BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

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| In the Matter of the Appeal of<br>City and County of San Francisco<br>San Francisco Electrical Reliability Project<br>FDOC Application 12344 | DOCKET NO. 3511<br><br>Notice of Title VI<br>Retaliation Complaint |

Ref: Application for Certification for the San Francisco Electric Reliability Project, CEC Docket 04-AFC-1
Amendment of USEPA OCR Title VI Complaint File No: 2R-00-R9
Amendment of US DOE OCRD Title VI Complaint File No: 03-003-HQ
New USEPA OCR Title VI Complaint File No: _____

On January 11, 2006[1], CAlifornians for Renewable Energy (CARE) filed an appeal with the Bay Area Air Quality Management District Haring Board regarding the previously issued Final Determination of Compliance (FDOC), issued by the Air District on October 22, 2005. The basis for the appeal was procedural--that the Air District had neglected to consider and respond to CARE's comments on the Air District's Preliminary Determination of Compliance (PDOC). The Air District's rules require consideration of all public comments prior to issuing the FDOC. The remedy CARE seeks in bringing this Appeal "is a re-issuance of the PDOC and an appropriate public comment period where the district actually carries out its statutory duty to analyze and respond to all issues raised by the public."

On January 23rd the District's permitting staff notified CARE that it would reissue the FDOC and allow for a public comment period on such.

**Subject:** RE: 04-AFC-1 CARE's Request for Continuance of February 2, 2006 hearing on the San Francisco Electric Reliability Project

[1] A hard copy was received by US Mail by the Hearing Board on January 13, 2006.



56405

**Date:** Mon, 23 Jan 2006 09:34:59 -0800

**From:** "Bob Nishimura" <BNishimura@baaqmd.gov> Add to Address Book Add Mobile Alert

**To:** "Michael Boyd" <michaelboyd@sbcglobal.net>

Mr. Boyd,

The District is going to reissue the Final DOC, therefore you will have another chance to comment on FDOC document. We have not issued the Authority to Construct because the CEC has not certified the project.

Bob Nishimura
415-749-4679

On January 30, 2006, CEC Intervenor CAlifornians for Renewable Energy (CARE) filed a document which included a "Request for Clarification on Staff's Proposal that the date for publication of the CEC FSA [Final Staff Assessment] be tentatively scheduled for February 15, 2006. In a subsequent January 29, 2006, filing with the California Energy Commission (CEC), CARE included a request that the Commission's staff not release its Final Staff Assessment (FSA) until the Air District's Hearing Board had heard CARE's Appeal. CARE's filing states that "Since the BAAQMD has approved the continuance of the Hearing on the Appeal of City and County of San Francisco San Francisco Electrical Reliability Project FDOC Application 12344 until March 23rd, 2006, for the commission's staff to issue the FSA on February 15, 2006, prior to our March 23rd, 2006 Hearing before the BAAQMD Hearing Board, besides being premature, this action may prejudice our rights to a fair hearing before the BAAQMD, giving CARE good cause to name the CEC in any subsequent judicial review of the Hearing Board's subsequent action on CARE's Appeal of FDOC Application 12344."

On February 16, 2006 the CEC staff filed it "Response of Energy Commission Staff Regarding Request from CAlifornians for Renewable Energy to Delay Proceeding Pending Re-Release of Air District Final Determination Of Compliance [FDOC]" in which CEC staff stated "[f]irst, contrary to CARE's assertions, Section 1744.5, subdivision (b) does not require the Air District to issue the FDOC prior to issuance of the Final Staff Assessment. Moreover, the Air District re-issued the FDOC with no substantive changes (after considering CARE's comments) on January 25, 2006, four days prior to

CARE's filing with this agency. The Air District has thus addressed the procedural issue raised by CARE, making its issue moot. Accordingly, there is no reason to suspend this proceeding even if CARE pursues its moot procedural point in the Air District's forum."

On February 22, 2006 CARE received an e-mail from District's Permitting staff informing CARE that we had no procedural right to comment on the re-issuance of the FDOC.

**Subject:** SFERP FDOC

**Date:** Wed, 22 Feb 2006 13:47:16 -0800

**From:** "Steve Hill" <SHill@baaqmd.gov> Add to Address Book Add Mobile Alert

**To:** michaelboyd@sbcglobal.net

**CC:** "Alexander Crockett" <ACrockett@baaqmd.gov>, "Bob Nishimura" <BNishimura@baaqmd.gov>

Mr. Boyd:

I noticed that you attached an email from Bob Nishimura to your January 30, 2006 filing to the CEC regarding the San Francisco Electrical Reliability Project.

In that email, Bob stated that ".. you will have another chance to comment on the FDOC document." I wanted to clarify that statement. The Final Determination of Compliance is a final document which is prepared after all comment has been received and reviewed. While we are always interested in feedback on the District's actions, there will be no further formal opportunity for comment on the document. I apologize if Bob's statement gave you the impression that another comment period might occur.

The FDOC was re-issued on January 25, 2006.

-- Steve Hill
Manager, Permit Evaluation
BAAQMD

On February 23, 2006 the CEC siting committee filed it "Response Regarding Request from CAlifornians for Renewable Energy to Delay Proceeding Pending Re-Release of Air District Final Determination of Compliance [FDOC]" wherein the CEC siting committee found, "CARE has already received Staff's response. We have

reviewed CARE's request in light of Staff's response and find no reason to interfere with, or delay, publication of the FSA." On February 21, 2006 the CEC staff issued their Final Staff Assessment[2].On February 23, 2006 the CEC siting committee issued its Notice of Prehearing Conference wherein "the Committee will assess the parties' readiness for evidentiary hearings, identify areas of agreement or dispute, and discuss the remaining schedule and procedures necessary to conclude the certification process. (Cal. Code of Regs., tit. 20, §1718.5.)" This violates CARE's procedural due process rights as a Party in the CEC's siting case as our Prehearing Conference Statement[3] is due six days prior to our hearing before the Hearing Board. "To facilitate the process, each party shall serve and file a Prehearing Conference Statement. The statements shall be received by the other parties and the Commission's Docket Unit, 1516 9th Street, MS 4, Sacramento, California 95814-5512, no later than 3:00 p.m. on March 17, 2006." [February 23, 2006 Notice of Prehearing Conference at page 2.]

The District is purportedly an independent agency from the CEC as was recently found in the February 14, 2006 Superior Court of California County of Sacramento Ruling on Submitted Matter of *Southern California Edison Company, vs. State Energy Resources Conservation and Development Commission, Case No.: 05CS00860* regarding the independence of the CEC's and the California Public Utilities Commission's regulatory authority. "The court finds that Public Utilities Code section 454.5(g) does not apply to Respondent Commission. Respondent is not acting as an agent of the CPUC. They are separate agencies with separate responsibilities. The fact that they have agreed to cooperate in some respects does not make one the agent of the other when it is fulfilling its own duties." If this is the case as the CEC has now claimed in superior court, why then would the District's staff and the CEC take the foregoing actions foreclosing CARE's right to a fair hearing before the Hearing Board?

Respectfully, CARE's so-called procedural point, is not moot, as CARE's remedy "is a re-issuance of the PDOC" not the re-issuance of the FDOC. Apparently the District's permitting staff is involved in a conspiracy with the Applicant, and the CEC, to deprive CARE of its civil and constitutional rights to a fair hearing on this matter before

[2] See http://www.energy.ca.gov/2005publications/CEC-700-2005-021/CEC-700-2005-021-FSA.PDF
[3] See http://www.energy.ca.gov/sitingcases/sanfrancisco/notices/2006-04-03_PREHE_CONF.PDF

this Hearing Board, as is demonstrated by the foregoing actions they have taken in response to this Appeal. CARE considers such Actions by the District's staff as evidence of retaliation against CARE for bringing a Civil Rights complaint against the District which is currently pending before the US EPA brought by CARE in April 2000. Further more such actions by the District's staff make the District Party to CARE's June 21, 2003 civil rights complaint against the City and County of San Francisco (CCSF) and the CEC which was filed with the US Department of Energy (US DOE) Office of Civil Rights, and US Department of Justice (US DOJ). CARE therefore notifies the District, the CEC, and the Hearing Board that such discriminatory acts by the District make these actions subject to an amendment of this complaint to include the District, to which the US EPA Office of Civil Rights now has a reviewing authority, over the District's actions therefore.

CARE brought a civil rights complaint under Title VI the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a–1975d, 2000a– 2000h-6, and Executive Order 12898, against the approval of the Los Medanos Energy Center and Delta Energy Center(s) in Pittsburg California, by the California Energy Commission (CEC), California Air Resources Board (CARB), and BAAQMD. The complaint was filed with US EPA on April 17, 2000 (USEPA OCR File No: 2R-00-R9)[4]. CARE was subsequently advised that the US EPA Office of Civil Rights had accepted CARE's complaint for investigation only in regard to CARB and BAAQMD, which receive federal funding from US EPA, but not CEC, which does not, but receives funding from the US Department of Energy (US DOE) instead. CARE participated with BAAQMD and CARB in an Alternative Dispute Settlement process funded by the US EPA through monthly meetings from June through December 2002. BAAQMD agreed to participate in that process, which can certainly be interpreted as a waiver of any objection the District may have had.

On June 21, 2003 CARE brought a civil rights complaint (US DOE OCRD file#03-003-HQ)[5] against the City and County of San Francisco (CCSF) and the CEC with the US Department of Energy (US DOE) Office of Civil Rights and Diversity for actions taken to date to site the three Williams Peakers in the southeastern section of San

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[4] See http://www.epa.gov/civilrights/docs/t6csdec05.pdf at page 3.

[5] See November 28, 2003 Federal Energy Regulatory Commission (FERC) submittal 20031128-5013 at: http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10000257

Francisco. The federal authorities have taken the complaint seriously enough for them to turn it over to the US Department of Justice.

In light of the additional relevant new information that has been created by the actions of the District and CEC and in response to our Appeal we respectfully request the Hearing Board take the following actions at least ten days in advance of CARE's March 23, 2006 hearing before the Hearing Board:

1. The Hearing Board notify the Applicant, District staff, and the CEC, that the FDOC and the PDOC for the City and County of San Francisco, San Francisco Electrical Reliability Project, FDOC Application 12344, shall not be deemed complete during the pendency and the Board's disposition of the Appeal before this Hearing Board, and
2. The Hearing Board direct the District staff to re-issue the PDOC and provide the public an appropriate public comment period where the District actually carries out its statutory duty to analyze and respond to all issues raised by the public.

For the Hearing Board to do otherwise will serve as notice of the Hearing Board's intent to discriminate and retaliate against CARE's members based on race and income. With all due respect, our understanding is that it is you as the administrative agency, and not CARE or other members of the public, that are responsible to conduct a full and fair investigation of matters as to which you have been put on notice by the submission of objectively-based, reasonably credible information, such as the information we have been providing you. We also understand that in order to preserve our legal rights to challenge your decision in regards to the issues of discrimination we have to notify you in advance of your decision of the alleged discriminatory practices, in this case involving the completion of the FDOC and the PDOC for the City and County of San Francisco, San Francisco Electrical Reliability Project, FDOC Application 12344, required for the CEC to carry out its AFC process for the siting and construction of Applicant CCSF's power plants in the disparately environmentally impacted low-income community of color of Bayview Hunters Point in San Francisco California.

Respectfully submitted,

Lynne Brown

Lynne Brown Vice-President
CAlifornians for Renewable Energy, Inc.
(CARE)
24 Harbor Road
San Francisco, CA 94124

Michael E. Boyd

Michael E. Boyd President
CAlifornians for Renewable Energy, Inc.
(CARE)
5439 Soquel Drive
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Cc

Docket 04-AFC-1 CEC service list & CEC Docket Unit

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Energy, Utilities and Communications Committee (Chair)
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Sacramento, CA 95814
c/o: Bill Julian, Committee Staff
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**Verification**

I am an officer of the Appellant Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27th day of February 2006 at San Francisco, California.

Lynne Brown

Lynne Brown Vice-President
CAlifornians for Renewable Energy, Inc.
(CARE)

**BEFORE THE**
**STATE OF CALIFORNIA**
**ENERGY RESOURCES CONSERVATION**
**AND DEVELOPMENT COMMISSION**

| | |
|---|---|
| Application for Certification<br>For the San Francisco<br>Electric Reliability Project | Docket No. 04-AFC-1 |

**Motion to Stay Proceeding and Protest of CARE**

CAlifornians for Renewable Energy, Inc. (CARE) respectfully files the following Motion to Stray this proceeding, objections and protests to the February 16, 2006 CEC staff filed "Response of Energy Commission Staff Regarding Request from CAlifornians for Renewable Energy to Delay Proceeding Pending Re-Release of Air District Final Determination of Compliance [FDOC]", the February 23, 2006 CEC siting committee's "Response Regarding Request from CAlifornians for Renewable Energy to Delay Proceeding Pending Re-Release of Air District Final Determination of Compliance [FDOC]", the February 21, 2006 CEC staff issuance of their Final Staff Assessment, the February 23, 2006 CEC siting committee's issuance of its Notice of Prehearing Conference wherein "the Committee will assess the parties' readiness for evidentiary hearings, identify areas of agreement or dispute, and discuss the remaining schedule and procedures necessary to conclude the certification process. (Cal. Code of Regs., tit. 20, §1718.5.)" in that this violates CARE's procedural due process rights as a Party in the CEC's siting case as our Prehearing Conference Statement is due six days prior to our hearing before the BAAQMD's Hearing Board on the completeness of the FDOC and the PDOC for the City and County of San Francisco, San Francisco Electrical Reliability Project, FDOC Application 12344.

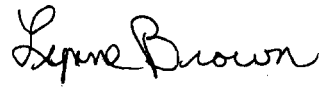
CARE wherefore alleges that "the District's permitting staff is involved in a conspiracy with the Applicant, and the CEC, to deprive CARE of its civil and constitutional rights to a fair hearing on this matter before this Hearing Board, as is demonstrated by the foregoing actions they have taken in response to this Appeal. CARE considers such Actions by the CEC as evidence of retaliation against CARE for bringing CARE's June 21, 2003 civil rights complaint against the City and County of San

Francisco (CCSF), herein the Applicant, and the CEC, which was filed with the US Department of Energy (US DOE) Office of Civil Rights and Diversity, and US Department of Justice (US DOJ). CARE therefore notifies the CEC, that such discriminatory acts by the CEC make these actions subject to an amendment of this complaint to include this retaliation by the CEC for bringing this complaint against it.

> In light of the additional relevant new information that has been created by the actions of the District and CEC and in response to our Appeal we respectfully request the Hearing Board take the following actions in advance of CARE's March 23, 2006 hearing before the Hearing Board:
> 1. The Hearing Board notify the Applicant, District staff, and the CEC, that the FDOC and the PDOC for the City and County of San Francisco, San Francisco Electrical Reliability Project, FDOC Application 12344, shall not be deemed complete during the pendency and the Board's disposition of the Appeal before this Hearing Board, and
> 2. The Hearing Board direct the District staff to re-issue the PDOC and provide the public an appropriate public comment period where the District actually carries out its statutory duty to analyze and respond to all issues raised by the public.
> [BAAQMD Notice of Title VI Retaliation Complaint attached.]

CARE wherefore demands the CEC cease and desists from taking the foregoing actions during the pendency and the Board's disposition of the Appeal before this Hearing Board. To do otherwise forecloses CARE's right to a fair hearing before the BAAQMD's Hearing Board and is an act of illegal retaliation for attempting to exercise our due process rights to meaningful and informed public participation. CARE therefore demands that the Commission stay the proceedings at this time during the pendency of the Board's review of CARE's Appeal and until the Hearing Board has issued its final disposition on this matter.

Respectfully submitted,



Lynne Brown- Vice President, CAlifornians for Renewable Energy, Inc. (CARE)
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Michael E. Boyd

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E-mail: michaelboyd@sbcglobal.net

**Verification**

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of February 2006, at Soquel, California.

Michael E. Boyd

Michael E. Boyd – President, CARE
CAlifornians for Renewable Energy, Inc. (CARE)
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