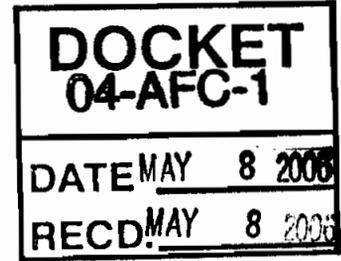


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State of California
Energy Resources Conservation
and Development Commission

In the matter of

**San Francisco Electric Reliability Project
Power Plant Licensing Case**

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Docket No. 04-AFC-1

Response to Staff's May , 5 2006 letter

5-8-06

DATE

Introduction

On May 5, 2006 CEC Staff filed a response to CARE's May 1, 2006 Objections and protests to the May 1, 2006 Hearing. In that letter staff attempts to limit my participation in these hearings in a collateral attack on a prior committee ruling. This response is an objection to staff's characterization of my participation as an extension of CARE's intervention and supports CARE's request for its rights to participate in the hearings.

Factual Content

At the Prehearing conference the Committee made it clear that it valued the participation of local residents by asking the parties their positions on the location of the hearings. The applicant who is also sensitive to the participation of other parties and local minority low income residents stated that it would like the topics of **purpose and need**, environmental justice, air quality, public health and alternatives to be held in San Francisco.

MR. Fay

7 Are there topics that from your
8 perspective you think would be inappropriate to
9 hold in Sacramento because of the local interest?
10 MS. SOLE: From the standpoint of a
11 community, we were hopeful that at least topics
12 such as air quality, purpose and need,
13 alternatives, public health, environmental justice
14 could be held in San Francisco.
15 That assumes that the community would
16 have an interest in participating in the
17 evidentiary hearings.

Prehearing conference transcript page 19 RT 4-3-06

CARE's representative Mr. Brown was equally clear that as a low income member of the public he could not afford to participate in Sacramento.

8 MR. BROWN: Yes. First of all I'd like
9 to object to the hearing being in Sacramento due
10 to the fact that the community is a low-income
11 community. And -- is very high.

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The committee then appropriately scheduled the requested topics in San Francisco with the exception of purpose and need. It was obviously the committee's intent to include the public and a reasonable person would assume that appropriate mechanisms like a toll free conference call would be set up for the public. CARE on the other hand did have an obligation to request a phone hookup and in fact did as the Staff admits in its May 5 response. Mr. Boyd did call the public advisor and request a phone line. Staff opines without support that Mr. Boyd understood that another member of the public was on the single phone line that had been provided for Mr. Boyd and Mr. Boyd agreed to coordinate with Mr. Da Costa. Staff attempts in its May 5 response to assign the coordination of public participation on Mr. Boyd. Clearly it is the Commission's responsibility to provide the public an opportunity to participate in sensitive proceeding like the SFERP and the Committee made clear its intent to involve the public at the Prehearing conference. Unlike the public Mr. Boyd is obligated to request a phone line and there is no dispute that he fulfilled his duty to do so. The low income minority public should in fact have been given a toll free number to call in to participate and not a single line that would require them to pay long distance charges to participate for several hours in a proceeding where additional pollution is going to be sited in their community. If any members of the community did want to participate they were not informed of the phone line nor were they given a reasonable opportunity to call in since the long distance charges would have been prohibitive. Mr. Da Costa as my witness was informed by me that a phone line was available but even I was not aware that only a single phone line had been reserved since customarily at business meetings and other Commission Meetings a conference call line is provided. Clearly CARE requested a phone line and clearly it was not provided those are the facts.

Staff's Collateral Attack

On June 10, 2004 I filed a petition for intervention that was granted by the Committee on June 22, 2004 almost two years ago. Staff had no objections to my intervention at that time nor did staff object when CARE subsequently filed its intervention. Since that time I have fully participated individually in this proceeding complying with every Committee order and fulfilling my obligations as an intervenor. At the Prehearing conference the committee did ask if I wished to combine my testimony and cross examination with CARE and I stated then that I was no longer a member of CARE and my interest are substantially different.

10 HEARING OFFICER FAY: Okay. Is there
11 any reason that you and CARE can't be combined as
12 a party for the purpose of the evidentiary
13 hearings?
14 MR. SARVEY: No. We have different
15 issues.
16 HEARING OFFICER FAY: You disagree with
17 their position?
18 MR. SARVEY: On some instances I do,
19 yes.
20 HEARING OFFICER FAY: All right.

Staff in its May 5, 2006 response mounts a collateral attack on the committees ruling at the Prehearing Conference by seeking to invoke Government Code Section 11440.50 to limit my participation. As demonstrated throughout this proceeding and at both evidentiary hearings conducted to date I am a separate party and have conducted myself as such even though some of my interests overlap with CARE. **In fact if any two parties are presenting the same evidence and supporting each others testimony it is the applicant and Staff even though staff is allegedly an independent party.**

¹ Notably, although Mr. Sarvey has been granted separate party status in this proceeding, he was until March 2006 the Treasurer for CARE. The Committee suggested consolidation of Mr. Sarvey and CARE at the pre-hearing conference, but did not require it. Staff believes that it would have been appropriate to require consolidation pursuant to Government Code Section 11440.50, as the interests of the parties appear to be the same, they name each other as witnesses on various topics, and until recently all belonged to or were "affiliated with" CARE.

Conclusion

Mr. Boyd did in fact request a phone line to participate in this proceeding and that is not in dispute Mr. Brown on behalf of CARE did request an opportunity to cross examine the CAL-ISO witness at the Prehearing Conference and that is not in dispute. CARE did not have an opportunity to do so since no toll free conference call line was provided that is not in dispute. The CA-ISO witness should be brought back so CARE can exercise its right to cross examine him. Additionally the CAL-ISO witness illegally provided testimony after the close of the local systems effects topic and after public comment and no opportunity for re cross was offered to the other parties so on that fact alone he should be brought back..

Staff should be admonished for its effort to limit my participation in a collateral attack on the Committees ruling at the Prehearing Conference.