

DOCKET	
04-AFC-1	

DATE	<u>NOV 21 2006</u>
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RECD.	<u>NOV 22 2006</u>
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**BEFORE THE
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Application for Certification
For the San Francisco
Electric Reliability Project

Docket No. 04-AFC-1

Demand to Correct or Cure Violation of the Bagley-Keene Open Meeting Act and Motion to Strike Commission Staff's and Applicant's Response to Intervener's Motion for Reconsideration as Untimely

Intervener CALifornians for Renewable Energy, Inc. (CARE) respectfully demands that the California Energy Commission (CEC) cure or correct actions alleged to have been taken in violation of California Government Code §§11120 et seq. in that the Commission failed to provide Intervener proper notice that the Energy Commission will conduct a hearing on CARE's Petition for Reconsideration of Final Commission Decision at a business meeting held on, November 29, 2006, in that the Commission failed to provide Intervener a written notice of the meeting as of the filing of this demand today November 21, 2006.

We respectfully object to the fact that a written copy of a notice of the November 29, 2006 business meeting has not been provided as of the filing of this Demand to Correct or Cure Violation of the Bagley-Keene Open Meeting Act. We also note for the record and object to the fact that both the Commission Staff and the Applicant clearly violated Title 20 of the California Code of Regulations § 1716.5, which allows only fifteen (15) days to respond to our November 1, 2006 Petition for Reconsideration of Final Commission Decision.

We also object to what appears to us to be a conspiracy by the Commission and the Applicant to violate the rights of CARE's members afforded by Title VI of the Civil Rights Act of 1964, Section 65040.12 (c) of the California Government Code, and the "equal protection" mandates of the Federal and State

Constitutions in that CCSF is in the process of siting the San Francisco Energy Reliability Project's three peaking gas fired combustion turbines in the Bay View Hunters Point community, which is predominantly a low-income minority community that has historically lacked the resources to properly fend for itself and assert as well as protect its constitutional and statutory rights.

Demand to Correct or Cure Violations

The Commission's failure to provide proper notice to Intervener and other members of the public violated the Bagley-Keene Open Meeting Act California Codes Government Code §§11120 et seq. which requires 10 days advanced notice be provided on the internet. § 11125(a) of which provides:

The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting."

INTERVENER alleges there is evidence of a substantial violation of a central provision of the Bagley-Keene Open Meeting Act, to provide the public proper notice. This internet notice failed to Comply with two provisions of § 11125 (a) of the Act.

- ◆ Written notice shall be given ... at least 10 days in advance of the meeting.
- ◆ The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

This acts as notice to call to your attention what Intervener alleges was a substantial violation of central provisions of the Bagley-Keene Open Meeting Act to provide 10 days advanced notice of the Commission Hearing on CARE's Petition for Reconsideration of Final Commission Decision. **The cure Intervener seeks is the notice by said Commission of said meeting with proper 10 days written notice** in accordance with the Act, to provide Intervener an

opportunity to exercise our constitutionally protected due process and equal protection rights, and the public an opportunity for meaningful and informed public participation in accordance with the First Amendment constitutional rights enjoyed by citizens of the United States.

Commission Staff and the Applicant clearly violated Title 20 of the California Code of Regulations § 1716.5

Both the Commission Staff and the Applicant clearly violated Title 20 of the California Code of Regulations §1716.5, which allows only fifteen (15) days to respond to our November 1, 2006 Petition for Reconsideration of Final Commission Decision.

Title 20 California Code of Regulations
§1716.5. Motions, Hearings, Decision.

Any party may file a motion or petition with the presiding member regarding any aspect of the notice or application proceeding. Responses to the petition by other parties shall be filed within 15 days of the filing of the petition unless otherwise specified by the presiding member.

Commission Staff filed its Response on November 20, 2006 and the Applicant filed its Response this afternoon on November 21, 2006. Clearly both the Commission Staff and the Applicant clearly violated Title 20 of the California Code of Regulations § 1716.5, which allows only fifteen (15) days to respond. Therefore CARE moves to strike Commission Staff's and Applicant's Response to Intervener's Motion for Reconsideration as untimely.

There appears to us to be un-refuted evidence of a conspiracy by the Commission and the Applicant to violate the rights of CARE's members afforded by Title VI of the Civil Rights Act of 1964, Section 65040.12 (c) of the California Government Code, and the "equal protection" mandates of the Federal and State Constitutions

To the Commission it may appear that CARE is just making another of many frivolous claims by bringing up the fact the your administrative records in

this proceeding demonstrate to us that your rules and regulations appear to only apply to us who represent members of the public affected by the City's project who are low-income people of color. In fact the evidence in your administrative record is that your rules and regulations do not appear to us to apply to the Commission Staff or to the Applicant. We contend this is because the Commission has consistently and unrepentantly allowed the Commission Staff and Applicant to file its briefs, comments, and other pleadings late, resulting in an adopted Decision without accounting for all mitigation for the project's impacts, including for example the presence of Hexavalent Chromium contaminating the project site and associated health risks to workers on the site, and many other instances where the Commission has clearly acted out of prejudice in the Commission's treatment of us, throughout these proceedings, which appears to us to be un-refuted evidence of a conspiracy by the Commission and the Applicant to violate the rights of CARE's members afforded by Title VI of the Civil Rights Act of 1964, Section 65040.12 (c) of the California Government Code, and the "equal protection" mandates of the Federal and State Constitutions based on our race and income. Again, CARE most strenuously, though respectfully, objects to this deprivation of constitutional guarantees.

Respectfully submitted,



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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 21st day of November 2006, at Soquel, California.



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