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STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of: Application for Certification for the CPV SENTINEL ENERGY PROJECT	**Docket No. 07-AFC-03** ERRATA: PREHEARING CONFERENCE STATEMENT OF INTERVENOR COMMUNITIES FOR A BETTER ENVIRONMENT

Pursuant to this Commission's Notice of Prehearing Conference and Evidentiary Hearing on the Limited Issue of Air Quality, which was issued April 29, 2010 and reaffirmed, despite party unavailability, on May 10, 2010, Intervenor Communities for a Better Environment ("CBE") respectfully submits this prehearing conference statement. As an initial matter, although the April 7, 2010 order directed intervenors to file testimony by April 28, 2010, the limited matters on which CBE intends to submit testimony are entirely within the control of CPV Sentinel, the Commission, or the South Coast Air Quality Management District ("AQMD"), and not CBE. As a result of this Commission's decision denying intervenors the right to propound data requests, CBE received what appears to be the information this morning, May 13. CBE has not yet reviewed the more than 330 documents (each individually linked to individually paginated files) or the volume of correspondence related to the documents that, were produced by AQMD at the close of business yesterday. CBE cannot yet evaluate which of its experts it will offer or how this evidence, on which it intends to base its arguments or testimony, will affect the matter.

Further, CBE strenuously opposes the calendaring of the evidentiary hearing on June 1, 2010. Aside from the obvious challenge of preparing evidence and expert testimony based on that evidence in two weeks, counsel for Intervenor California Communities Against Toxics ("CCAT") is unavailable. CBE and CCAT have offered their availability on several alternative dates, and CBE urges the Commission to allow them to participate in the evidentiary hearing by re-calendaring it one of the dates proposed below.

The issue of whether the Commission has made a conclusion about whether the offsets offered by AQMD to offset Sentinel's emission were transferred in compliance with all applicable laws remains in dispute and requires adjudication.

The issue of whether the credits offered by AQMD to offset Sentinel's emission comply with all applicable laws remains in dispute and requires adjudication. As discussed above, this determination is separate from, and must occur prior to, the certification at issue in 07-AFC-03.

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The issue of whether Sentinel is adequately offsetting its emissions remains in dispute and requires adjudication.

The issue of whether Sentinel has "a purchase agreement executed on or before December 31, 2008 to provide electricity to a public utility" sufficient to meet the requirements of AB 1318 remains in dispute and requires adjudication.

Also still in dispute are the issues being litigated in the pending state court action (CCAT v. SCAQMD Los Angeles Super. Case No. BS124264), including 1) whether AB 1318 is void as unconstitutional; and 2) whether AQMD has made all any necessary submission to the United States Environmental Protection Agency with regard to the crediting and use of emission reductions and shutdowns from minor sources.

4. The identity of each witness sponsored by each party (note: witnesses must have professional expertise in the discipline of their testimony); the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness

- Identity: air quality or emissions engineering expert
- Topic area: Emissions. This witness would be offered to assist in the Commission's separate evaluation of the creditability of emission reduction credits.
- Summary of testimony: Evaluation of data received by CBE on May 13, 2010 concerning emissions that historically produced and historically reduced or ended that constitute the basis for emission reduction credits offered by AQMD.
- Qualifications: Identity of expert depends on quality information offered by AQMD. Until CBE is able to review the data produced by AQMD, the identity of this expert cannot be assured.
- Time for direct: unknown

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This prehearing conference statement addresses the eight mandatory topics articulated in the Commission's April 7, 2010 order as follows:

1. The Air Quality issues that are complete and ready to proceed to evidentiary hearing

As discussed further below, at this time, CBE does not believe that the air quality issues of concern are complete or ready to proceed to evidentiary hearing.

2. The Air Quality issues that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefor

The vital question of whether or not the Sentinel facility has surrendered or procured emission reduction credits to offset its new emissions cannot be answered. Assembly Bill 1318 (AB 1318) imposes three distinct requirements on the Commission. First, it must determine whether the transfer of credits by AQMD to the Commission pursuant to AB 1318 satisfies all applicable legal requirements. Second, even more importantly, the Commission must determine whether the emission credits themselves are "creditable" under all applicable laws.

The third responsibility imposed on the Commission by AB 1318 is to refrain from certifying Sentinel if it concludes that the transfer or crediting of emission credits fails to comply with any applicable law. The Legislature was deliberate in separating the determination of legality from the Commission's "exercise of its regulatory responsibilities under its power facility and site certification authority." The initial tasks of evaluating the legality of the transfer and crediting are separate requirements from the third task – the siting decision at issue in 07-AFC-03.

Currently, the Commission has not opened, let alone completed, its process to determine whether the emission credits meet all legal requirements, and whether the transfer of those credits from AQMD's Priority Reserve to the Commission meets all legal requirements.

AB 1318 does not explicitly require that these two separate proceedings proceed sequentially, however, the Commission could not first certify Sentinel, and then open a separate proceeding on the transfer and creditability of credits the Commission received from AQMD. CBE therefore assumes and anticipates that the Commission will act simultaneously in evaluating the legality of the transfer and credit of emission credits and in certifying the facility. For this reason, CBE is submitting argument and evidence concerning the legal failures of the transfer and crediting of the emission reduction credits to this Commission within the framework of 07-AFC-03.

3. The Air Quality issues that remain disputed and require adjudication, and the precise nature of the dispute for each topic

The issue of whether the Commission has made a conclusion about whether the credits offered by AQMD to offset Sentinel's emission comply with all applicable laws remains in dispute and requires adjudication.

Identity: technical/legal expert
Topic area: Legal requirements concerning generation and transfer of offsets. This witness would be offered to assist in the Commission's separate evaluation of whether the transfer and crediting of the proffered emission reduction credits meets all applicable legal requirements.
- Summary of testimony: Summary of legal requirements applicable to creation and transfer of emission reduction credits. Evaluation of whether the proffered credits were legally transferred. Evaluation of whether the proffered credits were legally generated.
- Qualifications: Identity of expert depends on quality information offered by AQMD. Until CBE is able to review the data produced by AQMD, the identity of this expert cannot be assured.
- Time for direct: unknown

5. Air Quality issues upon which a party desires to cross-examine witnesses, a summary of the scope of each such cross-examination, and the time desired for each such cross-examination

To the extent that the Commission intends to hold its evidentiary hearing concerning the legality of the transfer & crediting of the emission reduction credits simultaneously with (and not prior to) the evidentiary hearing for on 07-AFC-03, CBE intends to cross-exam all witness offered to defend that legality of the transfer and creation.

6. A list identifying exhibits and declarations that each party intends to offer into evidence (see following section on formats)

Because the Commission denied the request to propound data requests on this topic, and CBE only secured the initial information disclosure May 13, CBE cannot identify or list the exhibits and declarations it will offer into evidence.

7. Proposals for briefing deadlines, impact of vacation schedules, and other scheduling matters

CBE has not had an opportunity to develop or submit its testimony because the necessary information is unavailable. CBE therefore requests that the Commission do one of the following:

a) Open a new proceeding to evaluate the transfer and creation of the emission credits offered by AQMD and suspend 07-AFC-03 until conclusion of the new evaluative proceeding.

or

b) In the alternative, open a new proceeding to be conducted concurrently with 07-AFC-03. Any of the following dates, proposed by the Commission as available dates for an evidentiary hearing, could accommodate such a separate and simultaneous proceeding: July 26, August 10, 12, 17, 23, 24 or September 9 or 20.

Currently, the following professional commitments are relevant to CBE's ability to participate in the above-captioned matter:
CCAT/CBE v. AQMD, LA Super. C't case number BS124264: June 11 hearing, September 23 trial
AIR/CBE v. ARB, SF Super. C't case number 09-50962: August 31 trial
USA/CBE v. PG&E N.D. Cal. case number 09-4503: dispositive hearing August 9 (stipulated, subject to confirmation by court.)

CBE's counsel has planned vacation out of the country July 1 through July 17.

8. Any proposed modifications to the proposed Conditions of Certification listed in the Final Staff Analysis (FSA) Air Quality section based upon enforceability, ease of comprehension, and consistency with the evidence.

CBE's evaluation of the Conditions of Certification in the FSA Air Quality section must be informed by the information it received today, but has not yet had a chance to review.

Dated: May 17, 2010

Respectfully submitted,

Shana Lazerow
Staff Attorney
Communities for a Better Environment

DECLARATION OF SERVICE

I, Shana Lazerow declare that on May 17, 2010, I served and filed copies of the document entitled

[ERRATA] PREHEARING CONFERENCE STATEMENT
OF INTERVENOR COMMUNITIES FOR A BETTER ENVIRONMENT

The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[http://www.energy.ca.gov/sitingcases/sentinel/index.html]

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

For service to all other parties:
__XX__sent electronically to all email addresses on the Proof of Service list;
__XX__by personal delivery or by depositing in the United States mail at Oakland, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND
For filing with the Energy Commission:
__XX__ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

_____depositing in the mail an original and 12 paper copies, as follows:
CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-3
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 17, 2010 at Oakland, California.

Shana Lazerow