

Carmela F. Garnica  
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**State of California**  
Energy Resources Conservation  
And Development Commission

In the Matter of: )  
 ) Docket No. 02-AFC-1  
 )  
Application for Certification for the ) Demand to Correct or Cure  
Blythe Energy Project, Phase II ) Violations of the Bagley-Keene  
[Blythe II] ) Open Meeting Act  
 )  
\_\_\_\_\_ )

**Demand to Correct or Cure Violations  
of the Bagley-Keene Open Meeting Act**

Intervenor respectfully demands that the California Energy Commission (C.E.C.) 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 10 days advanced notice of substantial amendments and changes to the Presiding Members Proposed Decision (PMPD), including, but not limited to, substantial changes to the PMPD air quality section in response to comments by the US EPA related to compliance with the requirements of the federal Clean Air Act (CAA). The U.S. EPA filed comments on November 21, 2005 according to the projects docket log #35946. The Commission never served a copy of the US EPA comment letter on Intervener nor did the Commission serve Intervener with a copy of the US EPA's 12/26/2002 comments on the PDOC<sup>1</sup> as can be demonstrated by the failure of the Commission to list a Proof of Service (POS) on the docket logs for these filings by the US EPA in this case.

The EPA attached a copy of a December 2002 letter to the Mojave Desert Air Quality Management District (MDAQMD) asserted their remained several deficiencies in the District's Preliminary Determination of Compliance (PDOC) on the project. In its comments on the PMPD, the EPA re-asserted two of those

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<sup>1</sup> See Docket Log # 27767.

deficiencies, related to the use of road paving offsets for PM10 and the use of interpollutant trade-offs without EPA approval. The only notice Intervener received that this Commission would ignore the US EPA's comments and recommendations where in the form of the so-called "Errata Regarding Presiding Member's Proposed Decision", Posted December 13, 2005, on the Commission's web site the day before the Commission's December 14, 2005 meeting where the PMPD was approved. The project's Hearing Officer e-mailed me a copy of the US EPA comment letter and the so-called "Errata" on December 13, 2005 following what the Commission called its "public hearing" on this project.

From: Garret Shean <[Gshean@energy.state.ca.us](mailto:Gshean@energy.state.ca.us)>

Date: Tue Dec 13 16:49:18 CST 2005

To: [j72erucdc@verizon.net](mailto:j72erucdc@verizon.net)

Subject: Committee Errata & EPA comments

Ms. Garnica, Here is the Committee's Errata which will be presented to the full Commission tomorrow when it considers adopting the Decision. Also, I have attached the pdf file of the EPA letters. Thank you, Garret Shean Hearing Officer

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The Commissions failure to provide proper notice to Intervenor 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. The written notice shall additionally include

the address of the Internet site where notices required by this article are made available."

INTERVENER alleges 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.

- ◆ Notice shall be given and also made available on the Internet 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.

### **Demand to Correct or Cure Violations**

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 substantial revisions to the PMPD to be voted on at the December 14<sup>th</sup> meeting. **The cure Intervener seeks is the notice by said Commission of said meeting with proper 10 days notice, and an opportunity to speak at said meeting** 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.

Respectfully submitted,



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## Verification

I am an Intervener in the above captioned proceeding, and I 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 December 17<sup>th</sup>, 2005, at Blythe, California

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carmela F. Garnica".

Carmela F. Garnica  
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