Carmela F. Garnica
12601 Ward St.
Blythe, Ca. 92225
(760)922-9080

DOCKET
02-AFC-1
DATE DEC 19 2005
RECD DEC 19 2005

State of California
Energy Resources Conservation
And Development Commission

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

[1] 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>
Date: Tue Dec 13 16:49:18 CST 2005
To: 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

Carmela F. Garnica
Escuela De La Raza Unida II
Early Learning Center
316 N. Carlton
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(760)922-9080

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 14th 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,

Carmela F. Garnica
12601 Ward St
Blythe, Ca. 92225
E-mail: j72erucdc@verizon.net

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 17th, 2005, at Blythe, California

Respectfully submitted,

Carmela F. Garnica
12601 Ward St
Blythe, Ca. 92225

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

IN THE MATTER OF: APPLICATION FOR CERTIFICATION FOR THE BLYTHE II ENERGY PROJECT	DOCKET NO. 02-AFC-1 **PROOF OF SERVICE LIST** **[REVISED 12/6/05]**

DOCKET UNIT

Instructions: Send an original signed document plus 12 copies and/or and electronic copy plus one printed copy to the address below:

CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
Attn: Docket No. 02-AFC-1
1516 Ninth Street
Sacramento, CA 95814-5512
docket@energy.state.ca.us

*Also send a printed **or** electronic copy of all documents to each of the following:*

APPLICANT

Caithness Blythe II, LLC.
Attn: Robert Looper
565 Fifth Avenue, 28th and 29th Floors
New York, NY 10017
rlooper@summit-energy.com

Greystone Environmental Consultants Inc.
Attn: Peter Boucher
10470 Old Placerville Rd., Suite 110
Sacramento, CA 95827
pboucher@greystone_consultants.com

**Revisions to POS List, i.e. updates, additions and/or deletions.*

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CURE
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***Quenton Hanson**
Executive Director
Small Business Economic Development Center
145 North Spring Street
Blythe, CA 92225
qhanson@paloverde.edu

**Revisions to POS List, i.e. updates, additions and/or deletions.*

DECLARATION OF SERVICE

I **Raquel Rodriguez**, declare that on **December 19, 2005**, I deposited copies of the attached **Demand to Correct or Cure Violations of the Bagley-Keene Open Meeting Act** in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above. Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

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

Raquel Rodriguez
[signature]

**Revisions to POS List, i.e. updates, additions and/or deletions.*

* * * *

INTERNAL DISTRIBUTION LIST

FOR YOUR INFORMATION ONLY! Parties **DO NOT** mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:

JOHN L. GEESMAN
Presiding Member
MS-31

ARTHUR H. ROSENFELD
Associate Member
MS-35

Garret Shean
Hearing Officer
MS-9

Bill Pfanner
Project Manager
MS-16

Lisa DeCarlo
Staff Counsel
MS-14

**Revisions to POS List, i.e. updates, additions and/or deletions.*

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New York, NY 10017

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Attn: Les Nelson, City Manager
Charles Hull, Asst. City Manager
235 N. Broadway
Blythe, CA 92225

Mario Rivera
Socorro Machado P.
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Mary Garcia
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Folsom, CA 95630

Quenton Hanson
Executive Director
Small Business Economic Development Center
145 North Spring Street
Blythe, CA 92225

Distribution for Blythe 2 - 02-AFC-1

From: Bill Pfanner, Project Manager (please return this distribution cover sheet to me)

Date: 12/19/05

RE: Demand to Correct or Cure - Carmela F. Garnica
improper Notice of Dec 13th Workshop

☒ **Docket**	☐ **Proof of Service**	☐ **Docket - Internal Only**
		☐ **Reference**
Distribute Internally to:		
Management	**Environmental / Eng. Staff**	**CEC Contractors**
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☐ Eric Knight (visual) ☐ Wil Walters (plume)	☐ M. Clayton (visual)	☐ Pat Pilling (geo/paleo)
☐ R. Johnson	☐ D. Flores (land use) ☐ D. Flores (traffic)	☐ Alvin Greenberg (hazmat handling, waste mgmt, pub health, worker safety)
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☐ S. Khoshmashrab (efficiency, facility design, reliability)	☐ K. Robinson (efficiency, reliability)	
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	☐ A. Guha (TSE) ☐ A. McCuen (TSE)	☒ Lisa DeCarlo
		Compliance
		☐ Steve Munro

Please post on web.

thanks