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

DOCKET
03-AFC-2
DATE AUG 04 2005
RECD. AUG 04 2005

APPLICATION FOR CERTIFICATION FOR THE LOS ESTEROS CRITICAL ENERGY FACILITY, PHASE 2 (LOS ESTEROS 2)	**DOCKET NO. 03-AFC-2** **(Revised 7/29/05)**

COMMITTEE RULING ON CARE'S REQUEST FOR HEARING

On July 22, 2005, Californians for Renewable Energy, Inc. (CARE) filed a document entitled "Request for Hearing" (Request). The Applicant filed its opposition to CARE's request on July 29, 2005. Staff filed remarks opposing CARE's request on August 2, 2005. The Committee has considered all of the arguments submitted on this matter and hereby denies CARE's *Request for Hearing* on the grounds set forth below.

CARE's Request correctly states that the Final Determination of Compliance (FDOC) was not filed by the Bay Area Air Quality Management District (BAAQMD) until the day of evidentiary hearings, that CARE had expressed reservations and "discomfort" concerning the FDOC timing and that CARE "would not support" inclusion of the FDOC and related documents into the evidentiary record without an opportunity to question the BAAQMD witness. The document was signed by Michael E. Boyd, President of CARE.

At the evidentiary hearing on June 30, 2005, CARE representative Mr. Sarvey stated that he was "a little uncomfortable" about cross-examining BAAQMD witness Steve Hill, having just received the FDOC. Therefore, to accommodate Mr. Sarvey, the Hearing Officer granted CARE two weeks to file additional comments concerning the FDOC, which the Committee would consider. (6/30 RT 144-145.) Mr. Sarvey agreed to this accommodation. (*Id.*) With this understanding, the FDOC was received into evidence without objection from any party, including CARE. (6/30/05 RT 145:14-18.) At the hearing all parties, including CARE, had an opportunity to question the BAAQMD witness about the FDOC. In fact, CARE questioned the witness at length concerning CO and BACT. (6/30/05 RT 121-130.)

Following the evidentiary hearing CARE filed no comments within the two-week period granted to the parties. CARE's *Request for Hearing* was filed six days after the comment deadline. Its Request is therefore untimely.

In addition, prior to the hearing CARE, and all other parties, were accorded ample opportunity to comment on the air quality issues of this case. While CARE claims generally that it has discovered "discrepancies" between the FDOC and prior

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BAAQMD comments, CARE offers no citation of such "discrepancies". Such mere allegation is not sufficient to constitute the requisite offer of proof or description of facts to support CARE's allegations. In fact, the record shows that with respect to BACT, offsets, and the other issues, the conclusions in the FDOC were essentially the same as these published in the preliminary determination of compliance (PDOC) on March 14, 2005. (6/30/05 RT, p. 81:24, 25; p.82:3-6.)

The PDOC was available for public review and comment for 30 days prior to the June 30, 2005 hearing. In addition, the Final Staff Assessment (FSA), filed May 26, 2005, contained information on the BACT levels BAAQMD was expected to impose. Thus, all parties, including CARE, had ample notice of the BACT levels expected for the project well in advance of the June 30, 2005 evidentiary hearing. CARE presents no compelling reason to hold another hearing to ask additional questions about BACT, a matter on which all parties should have been prepared to ask questions at the June 30, 2005 hearing.

Finally, CARE has not demonstrated a need for further evidentiary hearings. None of the slight differences among the PDOC, FSA, and FDOC amount to a material discrepancy with BAAQMD testimony given at the hearing. In its Request CARE does not cite a single example of a material discrepancy nor make an offer of proof that any such discrepancy involves disputed facts requiring adjudication at a hearing. CARE claims it "would not support" including the relevant air quality documents into evidence. (CARE's Request at p. 1.) However, when Staff moved the FDOC to evidence at the hearing, CARE made no objection. (6/30/05 RT 145:14-18.) Furthermore, once the Committee issues its Presiding Member's Proposed Decision (PMPD), all parties, including CARE, will have a full 30 days to again file their comments.

Accordingly, CARE's Request is not timely, is not supported by any allegation of facts, and is unnecessary. The Request is therefore denied.

Dated August 4, 2005, at Sacramento, California.

JACKALYNE PFANNENSTIEL
Commissioner and Presiding Member
Los Esteros Critical Energy Facility, Phase 2

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

APPLICATION FOR CERTIFICATION FOR THE LOS ESTEROS CRITICAL ENERGY FACILITY, PHASE 2 (LOS ESTEROS 2)	**DOCKET NO. 03-AFC-2** **(Revised 7/29/05)** ***PROOF OF SERVICE***

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DECLARATION OF SERVICE

I, Maggie Read declare that on August 4, 2005, I deposited copies of the attached COMMITTEE RULING ON CARE'S REQUEST FOR HEARING in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed those identified on the Proof of Service list above. Transmission via electronic mail was consistent with the requirements of the 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.

[signature]

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