

DOCKET

04-AFC-1

DATE Jul 12 2006

RECD. Jul 13 2006

**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

**Motion of CARE to
Strike Reply Briefs of CEC Staff and Applicant**

In behalf of Intervener CALifornians for Renewable Energy, Inc. (CARE) we hereby move to strike the Reply Briefs of the CEC Staff and the Applicant, City and County of San Francisco. This motion is to strike the CEC Staff Reply Brief for Staff's failure to file it within the due date of July 10th and the Motion to strike the Applicant's Reply for their failure to file their Opening Brief with in the specified CEC close of business on June 26, 2006 as directed by the Hearing Officer.

21 HEARING OFFICER FAY: We've had a
22 discussion with the parties and opening briefs
23 will be due on June 26th by close of business,
24 filed with the Commission, served on all parties.
25 And reply briefs will be due July 10th.
[May 31, 2006 RT at page 269.]

The Applicant failed to include with its Opening Brief a Motion to file out of time. The Applicant filed its Opening Brief after 5:00 PM (17:00). Despite these undisputed facts the Committee denied CARE's Motion to Strike Applicant's Opening Brief. This matter is under Appeal before the full Commission.

In allowing the Applicant to file its Opening Brief the Committee set a precedent that it is OK for the Parties who support this project's approval, the Applicant and Commission Staff, to ignore the Commission's regulations and flaunt the Orders of the Hearing Officer, and file their pleadings when ever they please at their sole discretion and therefore as a direct result of these prejudicial actions the Commission Staff filed its Reply Brief a day out of time.

CEC Staff, by filing its Reply Brief a day late was provided 24 hours to consider CARE's Reply Brief and then file its Reply Brief in response to CARE's Reply Brief. To offer CARE an opportunity respond at a later date is of no benefit to CARE because the CEC Staff already has an unfair advantage over CARE in that it can apparently file its Brief when ever it pleases which sets a bad precedent for other Commission siting cases in the future that CARE may participate in. In light of the fact that CEC Staff was fully aware of the improper action taken by Applicant in filing their Opening Brief and the Hearing Officer's threat of sanctions for violating Commission regulation it would be improper for the Committee to allow the Commission Staff to file their Reply Brief then a day late. Therefore we hereby move to strike the Reply Brief of the CEC Staff filed on July 11th.

We do recognize however that Commission Staff did comply with the Commission's Regulations by requesting permission from the Committee to file out of time. The Applicant on the other hand failed to make such a request when it filed its Opening Brief late yet the Committee allowed admission of Applicant's Open Brief anyways.

On June 26th we respectfully moved that the Applicant's Opening Brief be stricken. The Committee denied CARE's Motion based on the erroneous assumption that CARE did not serve its Opening Brief on the Commission's Docket Office according to sections 1209.5 and 1210 of the Commission's regulations. Even though not required by regulation or statute, CARE did electronically send its brief to Applicant's attorney to the address that the Commission's Docket Office provided to CARE pursuant to section 1210 of the Commission's regulations; however, the Docket Office provided the wrong email address. This matter is under Appeal to the full Commission and is scheduled to heard on August 2nd. Because it would be improper to allow the Applicant to file a Reply Brief if the Commission ultimately decides to strike Applicant's Opening Brief therefore we respectfully move that Applicant's Reply Brief be stricken as well or in the alternative that this matter be referred to the full Commission for consideration on August 2nd.

To do otherwise will demonstrate prejudice against CARE and its members who are predominantly low-income people of color residents of the impacted community of Bay View Hunters Point in San Francisco in violation of our due process and equal protection rights.

Respectfully submitted,



Lynne Brown – Vice President, CARE
Resident, Bayview Hunters Point
24 Harbor Road
San Francisco, CA 94124
E-mail: l_brown369@yahoo.com



Michael E. Boyd – President, CARE
5439 Soquel Dr., Soquel, CA 95073-2659
Tel: (408) 891-9677
Fax: (831) 465-8491
E-mail: michaelboyd@sbcglobal.net

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 12th day of July 2006, at Soquel, California.



Michael E. Boyd – President, CARE
CALifornians for Renewable Energy, Inc. (CARE)
5439 Soquel Dr.
Soquel, CA 95073-2659
Tel: (408) 891-9677
Fax: (831) 465-8491
E-mail: michaelboyd@sbcglobal.net