

From: Jeanne Sole <Jeanne.Sole@sfgov.org>
To: <gfay@energy.state.ca.us>, <michaelboyd@sbcglobal.net>
Date: 6/6/2006 10:52:42 AM
Subject: Re: SFERP, Docket Number 04-AFC-01, Revised Testimony and Resume of Martin Homec, and January 12, 2004 CPUC hearing transcript on PG&E Application for 230KV Jefferson Martin transmission line (for identification only)

Mr. Fay:

I would offer the following additional thoughts in response to Mr. Boyd's request.

1) The time for Mr. Boyd to debate the introduction of evidence was at the hearing. He made the same argument then and did not prevail. Parties should be able to devote their energies to preparing a brief rather than rearguing the myriad of rulings made during the hearings. I note that I believe it was over my objection that Mr. Boyd was allowed to have his witness testify about his understanding of the former testimony in question. Thus, Mr. Boyd had the opportunity to introduce his witnesses' understanding of the substance of the testimony in any event.

2) As Mr. Ratcliff's cross examination of Mr. Homec showed, the transcript is ambiguous as to the fact Mr. Homec was seeking to establish. Problems like these provide support for the rule that prior testimony should not be admitted unless a witness is truly unavailable. Parties did not have the opportunity to clarify with Mr. Manho what he meant. I note that the City did not have the same interest in the Jefferson-Martin proceeding to get clarity on the need for the turbines or not. The main interest of the City in that case was to support the need for Jefferson-Martin not the turbines -- which were not at issue in that proceeding.

3) The opinion of one PG&E planning engineer as to the need for the City's turbines will not determine whether the RMR for Potrero will be maintained or not after the City's turbines are in place. That question will be determined by the ISO. An ISO witness was present at the hearing and testified as to that question. Thus, the testimony Mr. Boyd seeks to introduce is largely irrelevant.

4) It continues to be unclear what portion of the transcript Mr. Boyd seeks to introduce. First he attached the entire transcript for January 12, 2004; then he provided pages 460-471; now he is once more attaching the entire transcript. Parties needed to have notice of what sections of the transcript Mr. Boyd sought to use. Certainly, use of anything more than pages 460-471 would be highly inappropriate.

Jeanne M. Solé
Deputy City Attorney
City and County of San Francisco
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlet Place
San Francisco, CA 94102-4682
(415) 554-4619

DOCKET
04-AFC-1

DATE Jun 6 2006

RECD. Jun 6 2006

Michael Boyd <michaelboyd@sbcglobal.net>
06/05/2006 10:20 PM

To

gfay@energy.state.ca.us, Jeanne Sole <Jeanne.Sole@sfgov.org>, docket@energy.state.ca.us, l_brown369@yahoo.com, frandacosta@att.net, Bob Sarvey <sarveybob@aol.com>, clifton smith <clifton.smith@sbcglobal.net>, pao@energy.state.ca.us, mxy6@pge.com

cc

bhale@sfgwater.org, Bill Pfanner <Bpfanner.HQPO2.SacHQ@energy.state.ca.us>, djordan@caiso.com, Dick Ratliff <Dratliff.HQPO4.SacHQ@energy.state.ca.us>, drp.gene@spcglobal.net, Gfay@energy.state.ca.us, Jim Boyd <Jboyd.HQPO4.SacHQ@energy.state.ca.us>, jcarrier@ch2m.com, jeffrey.russell@mirant.com, John Geesman <jgeesman.HQPO4.SacHQ@energy.state.ca.us>, joeboss@joeboss.com, kkubick@sfgwater.org, L_brown369@yahoo.com, mark.osterholt@mirant.com, michaelboyd@sbcglobal.net, michael.carroll@lw.com, Margret Kim <Mkim.HQPO4.SacHQ@energy.state.ca.us>, sarveybob@aol.com, steve4155@astound.net, steven@sfpower.org, svaikosk@energy.state.ca.us, Martin <martinhomec@comcast.net>

Subject

Re: SFERP, Docket Number 04-AFC-01, Revised Testimony and Resume of Martin Homec, and January 12, 2004 CPUC hearing transcript on PG&E Application for 230KV Jefferson Martin transmission line (for identification only)

Gary,

The reference to Professor Jack Friedenthal comes from page 5 of the CALIFORNIA LAW REVISION COMMISSION STAFF MEMORANDUM, Study K-201, August 31, 2004, Memorandum 2004-45, Conforming the Evidence Code to the Federal Rules of Evidence:Hearsay Issues.

Mike Boyd-CARE

--- Michael Boyd <michaelboyd@sbcglobal.net> wrote:

> Dear Gary Fay,

>

> At the May 31, 2006 Evidentiary Hearing on the
> SFERP

> I tried to introduce the January 12, 2004 transcript
> from the PG&E 230KV Jefferson Martin transmission
> line

> project before the CPUC which included the testimony
> of Manho Yeung of PG&E along with the Testimony of
> Martin Homec on the SF Airport alternative and you
> said you would only admit this transcript for
> identification only.

- > "Testimony in an Administrative Adjudication or
- > Arbitration Proceeding
- > "Section 1290 defines "former testimony" to include
- > testimony given in an administrative adjudication or
- > arbitration proceeding. In contrast, Rule 804(b)(1)
- > does not specifically address testimony given in an
- > administrative adjudication or arbitration
- > proceeding.
- > "In his 1976 analysis for the Commission, Professor
- > Jack Friedenthal observed that there "seems little
- > reason not to include all former testimony, formally
- > given, regardless of the nature of the proceedings,
- > provided other safeguards are met." Friedenthal,
- > Analysis of Differences Between the Federal Rules of
- > Evidence and the California Evidence Code (Jan.
- > 1976),
- > at 62-63 (hereafter, "Friedenthal Analysis").
- > "He recommended that California keep its approach of
- > including testimony given in an administrative
- > adjudication or arbitration proceeding."
- > CALIFORNIA CODES
- > EVIDENCE CODE
- > SECTION 1290-1294
- >
- > 1290. As used in this article, "former testimony"
- > means testimony
- > given under oath in:
- > (a) Another action or in a former hearing or
- > trial
- > of the same
- > action;
- > (b) A proceeding to determine a controversy
- > conducted by or under
- > the supervision of an agency that has the power to
- > determine such a
- > controversy and is an agency of the United States or
- > a
- > public entity
- > in the United States;
- > (c) A deposition taken in compliance with law in
- > another action;
- > or
- > (d) An arbitration proceeding if the evidence of
- > such former
- > testimony is a verbatim transcript thereof.
- >
- >
- > 1291. (a) Evidence of former testimony is not made
- > inadmissible by
- > the hearsay rule if the declarant is unavailable as
- > a
- > witness and:
- > (1) The former testimony is offered against a
- > person who offered
- > it in evidence in his own behalf on the former
- > occasion or against

- > the successor in interest of such person; or
- > (2) The party against whom the former testimony
- > is
- > offered was a
- > party to the action or proceeding in which the
- > testimony was given
- > and had the right and opportunity to cross-examine
- > the
- > declarant with
- > an interest and motive similar to that which he has
- > at
- > the hearing.
- >
- > (b) The admissibility of former testimony under
- > this section is
- > subject to the same limitations and objections as
- > though the
- > declarant were testifying at the hearing, except
- > that
- > former
- > testimony offered under this section is not subject
- > to:
- > (1) Objections to the form of the question which
- > were not made at
- > the time the former testimony was given.
- > (2) Objections based on competency or privilege
- > which did not
- > exist at the time the former testimony was given.
- >
- > 1292. (a) Evidence of former testimony is not made
- > inadmissible by
- > the hearsay rule if:
- > (1) The declarant is unavailable as a witness;
- > (2) The former testimony is offered in a civil
- > action; and
- > (3) The issue is such that the party to the
- > action
- > or proceeding
- > in which the former testimony was given had the
- > right
- > and opportunity
- > to cross-examine the declarant with an interest and
- > motive similar
- > to that which the party against whom the testimony
- > is
- > offered has at
- > the hearing.
- > (b) The admissibility of former testimony under
- > this section is
- > subject to the same limitations and objections as
- > though the
- > declarant were testifying at the hearing, except
- > that
- > former
- > testimony offered under this section is not subject
- > to

> objections
> based on competency or privilege which did not exist
> at the time the
> former testimony was given.

>

>

>

> Michael E. Boyd - President
> CALifornians for Renewable Energy, Inc. (CARE)
> 5439 Soquel Drive
> Soquel, CA 95073
> E-mail: michaelboyd@sbcglobal.net

>

>

>

>

>

>

>

>

>

>

==== message truncated ====

CC: <bhale@swater.org>, <Bpfanner.@energy.state.ca.us>, <clifton.smith@sbcglobal.net>, <djordan@caiso.com>, <docket@energy.state.ca.us>, <Dratliff@energy.state.ca.us>, <drp.gene@spcglobal.net>, <frandacosta@att.net>, <Jboyd@energy.state.ca.us>, <jcarrier@ch2m.com>, <jeffrey.russell@mirant.com>, <jgeesman@energy.state.ca.us>, <joeboss@joeboss.com>, <kkubick@swater.org>, <l_brown369@yahoo.com>, <mark.osterholt@mirant.com>, <martinhomec@comcast.net>, <michaelboyd@sbcglobal.net>, <michael.carroll@lw.com>, <Mkim@energy.state.ca.us>, <mxy6@pge.com>, <pao@energy.state.ca.us>, <sarveybob@aol.com>, <steve4155@astound.net>, <steven@sfpower.org>, <svalkosk@energy.state.ca.us>