Karen D. Higginbotham – by US Mail
Director of the Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

DOCKET
04-AFC-1
DATE MAR 16 2006
RECD. MAR 17 2006

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Amendment of USEPA OCR Title VI Complaint against BAAQMD, and CEC to include retaliation, File No: 2R-00-R9
Amendment of US DOE OCRD Title VI Complaint against CCSF, and CEC to include retaliation, File No: 03-003-HQ
New USEPA OCR Title VI Complaint against BAAQMD for racial discrimination, File No: _____

In behalf of CARE's Pittsburg California members and CARE's Bay View Hunters Point San Francisco California members, who reside in these low income communities of color, we wish to amend our civil rights complaints filed under Title VI of the Civil Rights Act of 1964, as follows. We wish to file an amendment of our USEPA OCR Title VI Complaint against the Bay Area Air Quality Management District [BAAQMD] and the California Energy Commission

PROOF OF SERVICE (REVISED 2/17/06) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 3/17/06

[CEC] (File No: 2R-00-R9) to include retaliation, and file an amendment of our US DOE OCRD Title VI Complaint against the City and County of San Francisco [CCSF] and the California Energy Commission [CEC] (File No: 03-003-HQ) to include retaliation, and to file a new USEPA OCR Title VI Complaint against BAAQMD for racial and economic discrimination, based on the actions they have taken in response to CARE's appeal (DOCKET NO. 3511) with the Bay Area Air Quality Management District Hearing Board regarding their improper issuance of the Final Determination of Compliance [FDOC] for the CCSF San Francisco Electrical Reliability Project, FDOC Application 12344.

On January 11, 2006[1], CAlifornians for Renewable Energy (CARE) filed an appeal with the Bay Area Air Quality Management District Hearing Board regarding the previously issued Final Determination of Compliance (FDOC), issued by the Air District on October 22, 2005. The basis for the appeal was procedural--that the Air District had neglected to consider and respond to CARE's comments on the Air District's Preliminary Determination of Compliance (PDOC). The Air District's rules require consideration of all public comments prior to issuing the FDOC. The remedy CARE seeks in bringing this Appeal "is a re-issuance of the PDOC and an appropriate public comment period where the district actually carries out its statutory duty to analyze and respond to all issues raised by the public."

In response to this lawfully filed appeal with the Bay Area Air Quality Management District Hearing Board, we allege the following retaliatory actions have been taken by the BAAQMD, CEC, and CCSF. On January 23rd the District's permitting staff notified CARE that it would reissue the FDOC and allow for a public comment period on such.

Subject: RE: 04-AFC-1 CARE's Request for Continuance of February 2, 2006 hearing on the San Francisco Electric Reliability Project

Date: Mon, 23 Jan 2006 09:34:59 -0800

From: "Bob Nishimura" <BNishimura@baaqmd.gov> Add to Address Book Add Mobile Alert

[1] A hard copy was received by US Mail by the Hearing Board on January 13, 2006.

To: "Michael Boyd" <michaelboyd@sbcglobal.net>

Mr. Boyd,

The District is going to reissue the Final DOC, therefore you will have another chance to comment on FDOC document. We have not issued the Authority to Construct because the CEC has not certified the project.

Bob Nishimura
415-749-4679

On January 30, 2006, CEC Intervenor CAlifornians for Renewable Energy (CARE) filed a document which included a "Request for Clarification on Staff's Proposal that the date for publication of the CEC FSA [Final Staff Assessment] be tentatively scheduled for February 15, 2006. In a subsequent January 29, 2006, filing with the California Energy Commission (CEC), CARE included a request that the Commission's staff not release its Final Staff Assessment (FSA) until the Air District's Hearing Board had heard CARE's Appeal. CARE's filing states that "Since the BAAQMD has approved the continuance of the Hearing on the Appeal of City and County of San Francisco, San Francisco Electrical Reliability Project FDOC Application 12344 until March 23rd, 2006, for the commission's staff to issue the FSA on February 15, 2006, prior to our March 23rd, 2006 Hearing before the BAAQMD Hearing Board, besides being premature, this action may prejudice our rights to a fair hearing before the BAAQMD, giving CARE good cause to name the CEC in any subsequent judicial review of the Hearing Board's subsequent action on CARE's Appeal of FDOC Application 12344."

On February 16, 2006 the CEC staff filed it "Response of Energy Commission Staff Regarding Request from CAlifornians for Renewable Energy to Delay Proceeding Pending Re-Release of Air District Final Determination Of Compliance [FDOC]" in which CEC staff stated "[f]irst, contrary to CARE's assertions, Section 1744.5, subdivision (b) does not require the Air District to issue the FDOC prior to issuance of the Final Staff Assessment. Moreover, the Air District re-issued the FDOC with no substantive changes (after considering

CARE's comments) on January 25, 2006, four days prior to CARE's filing with this agency. The Air District has thus addressed the procedural issue raised by CARE, making its issue moot. Accordingly, there is no reason to suspend this proceeding even if CARE pursues its moot procedural point in the Air District's forum."

On February 22, 2006 CARE received an e-mail from District's Permitting staff informing CARE that we had no procedural right to comment on the re-issuance of the FDOC.

Subject: SFERP FDOC

Date: Wed, 22 Feb 2006 13:47:16 -0800

From: "Steve Hill" <SHill@baaqmd.gov> Add to Address Book Add Mobile Alert

To: michaelboyd@sbcglobal.net

CC: "Alexander Crockett" <ACrockett@baaqmd.gov>, "Bob Nishimura" <BNishimura@baaqmd.gov>

Mr. Boyd:

I noticed that you attached an email from Bob Nishimura to your January 30, 2006 filing to the CEC regarding the San Francisco Electrical Reliability Project.

In that email, Bob stated that ".. you will have another chance to comment on the FDOC document." I wanted to clarify that statement. The Final Determination of Compliance is a final document which is prepared after all comment has been received and reviewed. While we are always interested in feedback on the District's actions, there will be no further formal opportunity for comment on the document. I apologize if Bob's statement gave you the impression that another comment period might occur.

The FDOC was re-issued on January 25, 2006.

-- Steve Hill
Manager, Permit Evaluation
BAAQMD

On February 23, 2006 the CEC siting committee filed it "Response Regarding Request from CAlifornians for Renewable Energy to Delay Proceeding Pending Re-Release of Air District Final Determination of Compliance [FDOC]" wherein the CEC siting committee found, "CARE has already received Staff's response. We have reviewed CARE's request in light of Staff's response and find no reason to interfere with, or delay, publication of the FSA." On February 21, 2006 the CEC staff issued their Final Staff Assessment[2].On February 23, 2006 the CEC siting committee issued its Notice of Prehearing Conference wherein "the Committee will assess the parties' readiness for evidentiary hearings, identify areas of agreement or dispute, and discuss the remaining schedule and procedures necessary to conclude the certification process. (Cal. Code of Regs., tit. 20, §1718.5.)" This violates CARE's procedural due process rights as a Party in the CEC's siting case as our Prehearing Conference Statement[3] is due six days prior to our hearing before the Hearing Board. "To facilitate the process, each party shall serve and file a Prehearing Conference Statement. The statements shall be received by the other parties and the Commission's Docket Unit, 1516 9th Street, MS 4, Sacramento, California 95814-5512, no later than 3:00 p.m. on March 17, 2006." [February 23, 2006 Notice of Prehearing Conference at page 2.]

On March 9th, 2006 the CCSF Office of City Attorney Dennis J. Herrera, e-mailed CARE a motion to dismiss CARE's appeal with the BAAQMD Hearing Board as "moot" claiming the CEC has jurisdiction over CARE's procedural due process rights before the BAAQMD.

> City and County of San Francisco (City or CCSF) respectfully files this motion to dismiss for lack of jurisdiction. The appeal filed by Californians for Renewable Energy (CARE) is moot since the Bay Area Air Quality Management District (BAAQMD or District) has issued a revised Final Determination of Compliance (FDOC) in this matter upon review of CARE's comments. In addition, CARE's appeal is not yet ripe since there is no final agency action in this matter. Prior to issuance of an Authority to Construct, CARE will have ample opportunity to raise the concerns it has expressed in its

[2] See http://www.energy.ca.gov/2005publications/CEC-700-2005-021/CEC-700-2005-021-FSA.PDF
[3] See http://www.energy.ca.gov/sitingcases/sanfrancisco/notices/2006-04-03_PREHE_CONF.PDF

> appeal before the California Energy Commission in upcoming testimony and evidentiary hearings.[March 9th Motion to Dismiss at page 1.]

CCSF is well aware of the fact that there is no public comment on the issuance of an Authority to Construct permit by the BAAQMD precluding the remedy CARE seeks in bringing this BAAQMD Hearing Board appeal "a re-issuance of the PDOC and an appropriate public comment period where the district actually carries out its statutory duty to analyze and respond to all issues raised by the public".

On March 15th, 2006 BAAQMD's Assistant Counsel, Alexander G. Crockett, echoed, CCSF's motion to dismiss CARE's appeal with the BAAQMD Hearing Board as "moot" based on the false assumption that CARE's procedural due process rights before the BAAQMD are under the jurisdiction of the CEC, an independent agency from the BAAQMD.

> [T]he Appeal must be dismissed because the forum for raising these issues is at the California Energy Commission ("CEC"), not the Air District. The CEC has jurisdiction over these issues pursuant to the Warren-Alquist Act (Public Resources Code §§ 25000 et seq.), [March 15th letter at page 1]

The CEC is purportedly an independent agency from the BAAQMD as was recently found in the February 14, 2006 Superior Court of California County of Sacramento Ruling on Submitted Matter of *Southern California Edison Company, vs. State Energy Resources Conservation and Development Commission, Case No.: 05CS00860* regarding the independence of the CEC's and the California Public Utilities Commission's [CPUC's] regulatory authority.

> "The court finds that Public Utilities Code section 454.5(g) does not apply to Respondent Commission. Respondent is not acting as an agent of the CPUC. They are separate agencies with separate responsibilities. The fact that they have agreed to cooperate in some respects does not make one the agent of the other when it is fulfilling its own duties."

If this is the case as the CEC has now claimed in California Superior Court, why then would the District's staff, CCSF's staff, and the CEC take the foregoing

actions foreclosing CARE's right to a fair hearing before the Hearing Board other than to discriminate on the basis of race and income? Respectfully, CARE's so-called procedural point, is not moot, as CARE's remedy "is a re-issuance of the PDOC" not the re-issuance of the FDOC.

Also, on March 15th, 2006 BAAQMD's Assistant Counsel, Alexander G. Crockett, served CARE a notice that the "Air Pollution Control Officer of the Bay Area Air Quality Management District ("APCO") opposes the application for intervention filed on March 3, 2006, by Mr. Robert Sarvey, who is an independent Party in the CEC's AFC proceeding for the San Francisco Electrical Reliability Project, and is an independent Party in the District's review of FDOC Application 12344 who filed his own individual comments on the PDOC.

> The Air Pollution Control Officer of the Bay Area Air Quality Management District ("APCO") opposes the application for intervention filed on March 3, 2006, by Mr. Robert Sarvey. The application should be denied pursuant to Hearing Board Rule 3.6 because the proposed Intervenor's interests are fully represented by the Appellant organization, which is already a participant in this proceeding. Adding the proposed Intervenor to the proceeding will not provide the Board with any additional information or insight that could aid in the determination of the issues that have been raised, and would simply serve to delay the prompt disposition of the Appeal.
>
> The interests that the proposed Intervenor has claimed in connection with the application are identical those being pursued by the Appellant. The APCO is informed and believes that the proposed Intervenor is a member of the Appellant organization, Californians For Renewable Energy, Inc. ("CARE"), as he has identified himself as the Treasurer of the organization in complaints about how the District has handled other power plant permits, and also in proceedings before the California Energy Commission ("CEC") regarding power plant issues in Southeast San Francisco. Moreover, the issues he has raised in connection with this project, both in his comments and in the documents that he has filed in this proceeding, are identical to the issues raised by Appellant. The proposed Intervenor simply wants to be an additional voice echoing the same arguments asserted by Appellant. [Opposition to Application for Intervention at pages 1 to 2].

Since Mr. Sarvey's comments where in fact timely responded to by the District, unlike CARE's comments which the District neglected to consider and respond to, this is clearly an attempt by the District to violate Mr. Sarvey's procedural due process rights as well as a act of intimidation and harassment of Mr. Sarvey who has a constitutional right to free association with any organization of his own choosing. The fact that CARE is claiming financial hardship and seeking a waiver of the appeal filing fee based on such, and Mr. Sarvey on the other hand has been required to and the District has accepted payment of an Intervention filing fee from Mr. Sarvey, the District is trying to have it both ways, denying Mr. Sarvey Intervention as a member of CARE, while requiring him to pay the fees required by an independent Party in intervention in CARE's appeal before the BAAQMD Hearing Board. This is clearly evidence of the District's retaliation against CARE and its members for exercising our rights as an organization or individual member to due process under the law. Further as a result of the District's intimidation and illegal harassment of Mr. Sarvey in this case he has been forced to resign as a member of CARE providing written notice of his resignation to CARE today.

Date: Thu, 16 Mar 2006 20:39:05 -0500

From: sarveybob@aol.com View Contact Details Add Mobile Alert

Subject:

To: michaeledwardboyd@sbcglobal.net

President Boyd and Board members,

It is with the deepest regrets that I must resign my post as treasurer of CARE. The BAAQMD has deprived me of my rights as a party in the SFERP Hearing Board Docket number 3511 because of my association with CARE. Accordingly to protect my interest before the hearing Board I offer my resignation effective March 16,2003. I have enjoyed my tenure on the board promoting responsible energy production in the State of California but due to harassment by the BAAQMD attorney Crokett I regrettably resign to protect my interests before the hearing board.

Sincerely

Robert M. Sarvey

CARE in behalf of it members herein alleges the District's permitting staff[4] is involved in a conspiracy with the power plant Applicant CCSF, and the CEC, to deprive CARE and its members of their civil and constitutional rights to a fair hearing on this matter before the BAAQMD Hearing Board, as is demonstrated by the foregoing actions they have taken in response to our appeal. CARE alleges such actions by the District's staff, CCSF's staff, and the CEC is evidence of retaliation against CARE for bringing a Civil Rights complaint against the District which is currently pending before the US EPA OCR brought by CARE in April 2000, for the same reason they are acting in concert with CCSF over their Bay View Hunters Point San Francisco power plant project, they are intent on discriminating against the low income community of color of Pittsburg California, and the low-income children of color of the Pittsburg School District in particular, as they are in the low income community of color of Bay View Hunters Point San Francisco, in order to site gas fired combustion turbines in these disparately impacted communities in violation of Title VI of the Civil Rights Act.

Further more such actions by the District's staff make the District Party to CARE's June 21, 2003 civil rights complaint against the City and County of San Francisco (CCSF) and the CEC which was filed with the US Department of Energy (US DOE) Office of Civil Rights, and US Department of Justice (US DOJ). CARE has already notified the District, the CEC, CCSF, and the Hearing Board that such discriminatory acts make these actions subject to an amendment of this complaint to include the District, to which the US EPA Office of Civil Rights now has a reviewing authority, over the District's actions therefore.

[4] We withhold judgment at this time as regards to the BAAQMD's Hearing Board as they have not yet taken formal action on our appeal. Further amendment to these complaints will be forthcoming as required.

Respectfully submitted,

Lynne Brown Vice-President
CAlifornians for Renewable Energy, Inc.
(CARE)
24 Harbor Road
San Francisco, CA 94124

Michael E. Boyd President
CAlifornians for Renewable Energy, Inc.
(CARE)
5439 Soquel Drive
Soquel, CA 95073

Verification

I am an officer of the Appellant 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 16th day of March 2006 at San Francisco, California.

Lynne Brown Vice-President
CAlifornians for Renewable
Energy, Inc. (CARE)

Attachment 1-a

To: nadvani@baaqmd.gov, l_brown123@hotmail.com, michaelboyd@sbcglobal.net, jbroadbent@baaqmd.gov, GRubenstein@sierraresearch.com, kkubick@sfwater.org, Dratliff@energy.state.ca.us
CC: "Jeanne Sole" <Jeanne.Sole@sfgov.org>, "Paula Fernandez" <Paula.Fernandez@sfgov.org>, "Theresa Mueller" <Theresa.Mueller@sfgov.org>
Subject: Fw: Hearing Board of the BAAQMD, Docket 3511, Withdrawal of the Request for Continuance of the Hearing
From: "Kenyana Davis" <Kenyana.Davis@sfgov.org> Add to Address Book Add Mobile Alert
Date: Thu, 9 Mar 2006 15:00:12 -0800

Enclosed please find the cover letter to the hearing board and the motion to dismiss.

Thank you.

Kiana V. Davis
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Attachments Attachment scanning provided by:

Files:

BAQmotn.pdf (89k) Save to Computer - Save to Yahoo! Briefcase
baqcovr.pdf (87k) Save to Computer - Save to Yahoo! Briefcase

Attachment 2-a

Subject: BAAQMD Hearing Board Docket No. 3511 -- SF Electric Reliability Project FDOC Appeal

Date: Wed, 15 Mar 2006 16:47:39 -0800
From: "Alexander Crockett" <ACrockett@baaqmd.gov> View Contact Details Add Mobile Alert
To: michaelboyd@sbcglobal.net, sarveybob@aol.com, Jeanne.sole@sfgov.org, l_brown369@yahoo.com

All:

Attached is the text of two documents filed today with the BAAQMD's Hearing Board in Docket No. 3511, the Appeal of the BAAQMD Final Determination of Compliance for the San Francisco Electric Reliability Project. The documents were served by mail as is standard Hearing Board practice, but I thought I would circulate the text electronically for everyone's convenience.

Sandy Crockett

Alexander G. Crockett, Esq.
Assistant Counsel
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94104
Phone: (415) 749-4732
Fax: (415) 749-5103
www.baaqmd.gov

Attachments Attachment scanning provided by:

Files:

Response_to_Appeal.pdf (56k) Save to Computer - Save to Yahoo! Briefcase
Sarvey_Intervention_Opposition_Letter.pdf (49k) Save to Computer - Save to Yahoo!

Cc

Docket 04-AFC-1 CEC service list, CEC Docket Unit, &
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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE SAN FRANCISCO ELECTRIC RELIABILITY PROJECT

Docket No. 04-AFC-01
PROOF OF SERVICE
Revised 2/17/06

DOCKET UNIT

Instructions: *Send an original signed document plus 12 copies* ***or*** *an electronic copy plus one original paper copy to the address below:*

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 04-AFC-01
DOCKET UNIT, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

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

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DECLARATION OF SERVICE

I, **Laura J. Murphy**, declare that on **March 17, 2006**, I deposited copies of the attached **Civil Rights Complaint Amendment** in the United States mail at Sacramento, California 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.

Laura J. Murphy

[signature]

CEC INTERNAL
DISTRIBUTON LIST 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:

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MS-34

JOHN L. GEESMAN, Commissioner
Associate Member
MS-31

Stan Valkosky
Hearing Officer
MS-9

Bill Pfanner
Project Manager
MS-15

Dick Ratliff
Staff Counsel
MS-14

Margret J. Kim
Public Adviser
MS-12