

DOCKETED

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STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the matter of:

Application for Certification of the
PUENTE POWER PROJECT

DOCKET NO. 15-AFC-01

**DECLARATION OF ELLISON FOLK
IN SUPPORT OF THE CITY OF
OXNARD'S PETITION TO COMPEL**

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Attorneys for the CITY OF OXNARD

DECLARATION OF ELLISON FOLK IN SUPPORT OF THE CITY OF OXNARD'S
PETITION TO COMPEL
DOCKET NO. 15-AFC-01

DECLARATION OF ELLISON FOLK

I, Ellison Folk, declare as follows:

1. I am an attorney licensed to practice in the State of California and a partner at Shute, Mihaly & Weinberger LLP, attorneys for the City of Oxnard. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief, and as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. On August 4, 2015, the City submitted its first set of data requests to NRG, the applicant in this proceeding. Among other things, the City's Data Request 1 sought the unlocked excel spreadsheets containing emission calculations that NRG was using to support its application.

3. On August 17, NRG requested confidential designation for the unlocked emission calculations, and, one week later, objected to the City's Data Request 1 on confidentiality grounds.


4. The Commission has not granted NRG's request for confidential designation of these materials.

5. In August, I contact NRG's counsel, Michael Carroll, and informed him that, to the extent that NRG had confidential information that was responsive to the City's data request, the City was willing to enter a non-disclosure agreement with NRG. After further email discussions, the City and NRG agreed in principle to a non-disclosure agreement for the information requested in Data Request 1. A true and correct excerpted copy of this correspondence is attached hereto as Exhibit 1.

6. Following that agreement, however, NRG has not produced the requested data. Instead, on October 30, Mr. Carroll informed me that NRG would not produce the requested data because it was planning to withdraw its original emission calculations. A true and correct copy of this correspondence is attached hereto as Exhibit 2.

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

Executed November 20, 2015, at San Francisco, California.



Ellison Folk

727244.1

EXHIBIT 1

Ellison Folk

From: MICHAEL.CARROLL@LW.com
Sent: Friday, September 25, 2015 10:37 AM
To: Ellison Folk
Subject: RE: Puente Power Project (15-AFC-01)

Hello Ellison,

Following up on our phone conversation yesterday, upon further consideration, we have determined that we can provide to the City the information requested in City Data Request No. 1 pursuant to a nondisclosure agreement. I will prepare a draft nondisclosure agreement for your consideration.

Regards, Mike.

Michael J. Carroll

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<http://www.lw.com>

From: Carroll, Michael (OC)
Sent: Friday, September 18, 2015 1:48 PM
To: 'Ellison Folk'
Subject: RE: Puente Power Project (15-AFC-01)

Hello Ellison,

After careful consideration, we have determined that we can provide to the City the information requested in City Data Request No. 3, although some of the documents will have some information redacted. I expect to be able to provide this information to you by the end of next week.

We have further determined that we cannot provide the information requested in City Data Request Nos. 1, 4 and 41 or Data Request No. 2 to the extent that it calls for information requested in Data Request Nos. 1, 4 and 41, for the reasons set forth in our objections filed on August 24, 2015.

Regards, Mike.

Michael J. Carroll

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<http://www.lw.com>

From: Ellison Folk [<mailto:Folk@smwlaw.com>]
Sent: Tuesday, September 08, 2015 10:42 AM
To: Carroll, Michael (OC)
Subject: RE: Puente Power Project (15-AFC-01)

Mike,

Since the City is willing to enter a nondisclosure agreement for any confidential information, the terms of agreements between NRG and other entities do not govern whether the requested data is subject to confidential disclosure. As you know, the Commission rejected your contrary argument in the HECA proceeding (08-AFC-8A).

I'm happy to review a draft nondisclosure agreement if you've prepared one. In any event, please let me know when you will provide the requested data to the City.

Best,

Ellison

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From: MICHAEL.CARROLL@LW.com [<mailto:MICHAEL.CARROLL@LW.com>]
Sent: Friday, September 04, 2015 9:07 AM
To: Ellison Folk
Subject: RE: Puente Power Project (15-AFC-01)

Thanks Ellison. I am sorry I was not able to get back to you yesterday as promised. It took us a little longer to finish up the responses to the City's data requests than anticipated.

I am working through your request that Applicant consider providing information requested by the City that Applicant deems confidential. The subject data requests implicate a number of parties in addition to the applicant, and a number of agreements between the applicant and those parties covering the requested information. As a result, I do not yet have any specific response to your request, but hope to have something more specific by next week.

Regards, Mike.

EXHIBIT 2

Ellison Folk

From: MICHAEL.CARROLL@LW.com
Sent: Friday, October 30, 2015 11:11 AM
To: Ellison Folk
Subject: RE: CEC proceedings

Hello Ellison. As soon as I am able to specifically identify the revised submission, I will complete the NDA , get it signed on our side and send it to you for signature.

The prior responses are going to be meaningless since they will reflect not only updated emissions factors, but also different met data and other changes as a result of updates to the AERMOD model. Our plan is to withdraw the prior responses and completely replace them with the updated analysis. To avoid confusion, we do not want the prior analyses floating around.

Mike,

Michael J. Carroll

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From: Ellison Folk [<mailto:Folk@smwlaw.com>]
Sent: Monday, October 26, 2015 4:06 PM
To: Carroll, Michael (OC)
Subject: RE: CEC proceedings

Mike,

I am ok with the change regarding the administrative proceedings/confidentiality process. However, we would like to see the current submission in addition to the second revised submission. The City's request has been outstanding since the beginning of August and we'd like to see the emissions calculations that have already been conducted.

Thanks,

Ellison

From: MICHAEL.CARROLL@LW.com [<mailto:MICHAEL.CARROLL@LW.com>]
Sent: Friday, October 23, 2015 12:27 PM
To: Ellison Folk
Subject: RE: CEC proceedings

Hello Ellison. I have been meaning to call you about this. We recently received updated emissions information from GE on the turbine. As a result, we are in the process of re-doing all of the air quality analysis and modeling. We informed staff of that development last week and there was a record of conversation docketed on the issue which you may have

seen. The new submission will completely replace the existing submission, and we plan to withdraw the existing submission. I expect the revised analysis to be completed within the next few weeks.

With respect to the NDA, I accepted your changes, and have proposed some additional changes to paragraph 3 (see attachment). I have also added in references to the revised analysis. I suggest that we finalize the terms of the NDA now, and then when we have the revised analysis, we can simply complete the reference in the NDA and it will be ready to go. Please let me know if my additional proposed changes are acceptable.

Regards, Mike.

Michael J. Carroll

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From: Ellison Folk [<mailto:Folk@smwlaw.com>]
Sent: Thursday, October 22, 2015 8:55 AM
To: Carroll, Michael (OC)
Subject: CEC proceedings

Hi Mike,

I'm following up on the NDA and the edits we sent over a week ago. I would appreciate it if you could get back to me on it. We would like to get this wrapped up and get the data requested.

Best,

Ellison

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