



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

DOCKET
07-AFC-3

DATE	APR 22 2010
RECD.	APR 22 2010

APPLICATION FOR CERTIFICATION FOR THE
CPV SENTINEL ENERGY PROJECT
BY THE CPV SENTINEL, L.L.C

DOCKET No. 07-AFC-3

**COMMITTEE ORDER DENYING
CCAT'S PETITION TO ALLOW SUBMISSION OF DATA REQUESTS**

I. Summary

On March 30, 2010, Intervenor, California Communities Against Toxics (CCAT), filed its *Petition For Order to Allow Submission of Data Request* (Petition). The Petition is **DENIED** for the reasons set forth below.

II. Background

The following is a brief chronology of relevant events:

- June 25, 2007 – Applicant filed the AFC (Application for Certification) for the CPV Sentinel project;
- August 21, 2007 – The Commission found the AFC to be data adequate;
- February 27, 2008 - Discovery closes (180 days from the date AFC was found data adequate [Cal. Code Regs., tit 20, § 1716 subd. (e)]);
- October 21, 2008 – Pre-Hearing Conference (and, according to the Revised Notice of Pre-Hearing Conference filed October 1, 2008, the last day to file a Petition to Intervene);
- November 3, 2008 – Evidentiary Hearing on all topics except Air Quality;
- December 5, 2008 – Project Design Refinements (Exhibits 134-136) admitted and evidentiary record closed on all topics except Air Quality;
- December 7, 2009 – CCAT filed petition to intervene;
- December 22, 2009 – Evidentiary Hearing on Air Quality cancelled and Scheduling Order vacated; CCAT petition to intervene granted;

- January 1, 2010 – Health and Safety Code section 40440.14 became effective;
- March 2, 2010 – SCAQMD Addendum to Final Determination of Compliance filed;
- March 30, 2010 – CCAT filed its Petition to Allow Submission of Data Requests;
- April 7, 2008 – Applicant files Opposition to Petition; Notice of 5/19/10 Pre-Hearing Conference and 7/19/10 Evidentiary Hearing on Air Quality issued; and
- April 15, 2008 – CCAT filed its Reply brief.

I. DISCUSSION

CCAT's Petition requests an Order allowing the following two data requests:

1. The additional information provided by CPV to AQMD related to emissions offsets that formed the basis for AQMD's determination that the CPV Project complies with all applicable requirements of the local, state, and federal air quality Rules and Regulations related emissions offsets.
2. Electronic copies of the records that show that the emission offsets provided in the internal emission offset account tracking system pursuant to AB 1318 as described in the Determination of Compliance Appendix N, Attachment I, and Tables 1 and 2 provided to the California Energy Commission for the Sentinel Power Project meet the integrity criteria for qualifying as offsets, meaning that they are all Real, Permanent, Quantifiable, Enforceable and Surplus.

In its Opposition, Applicant, CPV Sentinel, LLC (Sentinel) responds to each data request separately. First, Sentinel explains that the records sought in Data Request #1 are equally available public records, and then it goes on to identify the requested records and gives their Energy Commission docket number which is all that CCAT needs to obtain the records.

As to Data Request #2, Applicant's opposition brief points out that "the information sought in Request #2, to the extent it exists, is within the custody and control of SCAQMD, which is not a party to these proceedings. Therefore, there is no authority within the CEC process for CCAT to obtain the information requested in Request #2 from the SCAQMD even if the Committee were to re-open discovery as requested in the petition."

Indeed, the Energy Commission's jurisdiction does not extend to compelling SCAQMD to respond to discovery where, as here, SCAQMD is not a party to these proceedings. However, as a public agency, SCAQMD is subject to the Public Records Act (Government Code § 6250).

We find that Petitioner's first data request is equally available to CCAT; therefore, the Committee will not burden the Applicant with its production. The data request will be satisfied simply by making a public records request to the Energy Commission's docket unit. Petitioner's second data request is unavailing due to the limitations of the Commission's powers. Petitioner may make a public records request to SCAQMD. In both instances, the issues are resolved so the Petition is moot. Therefore, there is no necessity for the Committee to consider whether good cause exists to reopen discovery.

III. CONCLUSION AND ORDER

Because we find that there are no remaining justiciable issues for the Committee to resolve, the Petition is moot. Accordingly, the Petition of California Communities Against Toxics for an order to allow submission of data request is **DENIED**.

Dated April 22, 2010, at Sacramento, California

A handwritten signature in black ink, appearing to read "James D. Boyd", written over a horizontal line.

JAMES D. BOYD
Vice Chair and Presiding Member
CPV Sentinel Committee



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**PROOF OF SERVICE
(Revised 3/24/2010)**

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DECLARATION OF SERVICE

I, Maggie Read, declare that on March 25, 2010, I served and a filed copy of the attached Committee Order Granting Petition to Intervene, dated March 24, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/sentinel/index.html\]](http://www.energy.ca.gov/sitingcases/sentinel/index.html)

The documents has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

- sent electronically to all email addresses on the Proof of Service list;
- by personal delivery;
- by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

- sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-3
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original signed by: _____
Maggie Read
Hearing Adviser's Office