

STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of: ) Docket No. 07-AFC-3  
)  
Application for Certification for the )  
CPV Sentinel Energy Project ) June 30, 2010  
by the CPV Sentinel, L.L.C. )

<b>DOCKET</b>	
<b>07-AFC-3</b>	
DATE	<u>06/30/10</u>
RECD.	<u>06/30/10</u>

STAFF RESPONSE TO AIR DISTRICT MOTION

On June 15, 2010, intervenor California Communities Against Toxics (CCAT) filed the testimony of Michael Harris in the Sentinel Energy Project proceeding with regard to the California Energy Commission’s (Energy Commission) AB 1318 determination. The following day, the South Coast Air Quality Management District (District) filed a motion to disqualify Michael Harris as a witness. The motion is made on the ground that Mr. Harris, who is a lawyer, has formerly served as District counsel on the very legal issues his testimony is intended to address, that his testimony risks disclosing confidential information of a prior client, and that the attorney-client privilege applies. Title 20, California Code of Regulations, section 1716.5 provides that any party may file a response to the motion of another party within 15 days of the filing of the motion. This is staff’s response to the district’s motion.

Mr. Harris’s testimony, should it be called that, consists of his opinion about the application of the law to the circumstances of the determination that the Sentinel Committee must make pursuant to AB 1318 (Stats. 2009, ch. 285, § 3), and particularly with regard to the legal validity of the offsets identified for the Sentinel project. As such, Mr. Harris’s “testimony” is more accurately characterized as legal argument that is typically the subject of briefing, and not provided as witness testimony.

The Energy Commission’s scheduled July 19 hearing is an evidentiary hearing. The statutory definition of “evidence” is testimony, writings, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. (Evid. Code, § 140.) The Sentinel proceeding is by nature an “adjudicative proceeding,” which is in

turn defined as “an evidentiary hearing *for determination of facts* pursuant to which an agency formulates and issues a decision.” (Govt. Code, §11405.20 [emphasis added].)

The application of the law to the facts in this case is critical, and Mr. Harris’s legal arguments are pertinent to the Sentinel Committee’s decision. However, Staff believes that it is appropriate to treat Mr. Harris’s statements not as testimony but as legal argument similar to that provided by the District in its June 30 brief responding to such argument. Undoubtedly, whether or not the Committee should disqualify Mr. Harris as a witness, the legal issues raised by Mr. Harris will be made by CCAT. Thus, these issues will need to be briefed by the parties, whether or not Mr. Harris testifies as a witness.

Accordingly, Staff believes that Mr. Harris’s declaration should be treated as legal argument rather than evidence. The legal issues raised by Mr. Harris should be briefed,<sup>1</sup> and could -- should the Committee wish -- be the subject of discussion at the July 19, 2010 hearing.

Date: June 30, 2010

Respectfully submitted,

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<sup>1</sup> The District has now filed a brief on these legal issues.



**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](http://WWW.ENERGY.CA.GOV)**

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

**DOCKET No. 07-AFC-3**

**PROOF OF SERVICE  
(Revised 5/21/2010)**

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DECLARATION OF SERVICE

I, Maria Santourdjian, declare that on June 30, 2010, I served and a filed copies of the attached Staff Response to Air District Motion, dated June 30, 2010. The original documents, 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:

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**AND**

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**CALIFORNIA ENERGY COMMISSION**

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

[docket@energy.state.ca.us](mailto: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:  
Maria Santourdjian