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From: Robert Sarvey
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DOCKET 06-AFC-6	
DATE	JAN 11 2008
RECD.	JAN 11 2008

RE: Complaint Against Susan Gefter, Hearing Officer for Eastshore Energy Center (06-AFC-6) for Lack of Judicial Demeanor and Improper Rulings

On December 17, 2007, the California Energy Commission held an evidentiary hearing for the Eastshore Energy Center 06-AFC-6. I participated as an intervener and provided timely-filed expert testimony in air quality for the proposed project. This complaint is lodged against the Hearing Officer Susan Gefter for lack of judicial demeanor and denial of due process (improper rulings) during the course of the hearing. During my cross examination of the applicant and the staffs witness, I was interrupted and asked to present my testimony. The following exchange occurred between me and the Hearing Officer Gefter.

25 So Mr. Sarvey, if you would like to
1 present direct testimony now. I know that you
2 have offered yourself as an expert witness on air
3 quality. As you know, I haven't ever qualified
4 you as an expert witness on air quality, however,
5 I will qualify you as an expert intervenor and
6 very knowledgeable in our proceedings. So if you
7 want to, you know, be sworn in I'll take your
8 testimony.
9 MR. SARVEY: I'd have to object to that.
10 HEARING OFFICER GEFTER: Okay. Do you
11 want to be sworn in?
12 MR. SARVEY: I'd have to object to your
13 not qualifying me as an expert witness. I **have**
14 **the educational background and the experience.**
15 HEARING OFFICER GEFTER: I **know and**
16 **other hearing officers have qualified you but I**
17 **won't.** However, I will accept your testimony and
18 if you want to be sworn I will swear you in.
19 MR. SARVEY: I'll do so under

20 objection.

21 HEARING OFFICER GEFTER: Okay

Hearing Officer Gefter ruled that I would not be allowed to participate as an expert witness and ruled without affording me an opportunity to present my credentials. Neither did she hear from all the other parties in the matter, including staff, other interveners, and the applicant. It is my view, supported by years of case law and judicial procedure that an objection to my being considered an "expert witness" should have originated from one of the other parties. While I am aware that a judge or hearing officer can make a ruling on their own motion, in the furtherance of justice and based upon facts available to the court, no such finding or motion or statement of facts was proffered by Hearing Officer Gefter. She offered only a personal opinion not based upon any evidence whatsoever. It is most telling that the Hearing Officer Gefter stated that "other hearing officers have qualified you as an expert but I wont". This statement demonstrates bias, lack of judicial demeanor, and constitutes evidence of an improper ruling.

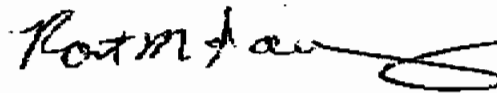
I had intended to support CEC staffs proposed condition of certification Public Health-I in the next segment of the hearing. However, when I heard Hearing Officer Gefter tell me at the end of my air quality statement that "you are done", I left the hearing thinking that she had told me I was not welcome to participate further. I only learned later that I did not hear her complete her statement allowing me to stay if I had more to contribute, presumably in public comment, due to the simultaneous talking by other parties in the room. In my view, a Hearing Officer should not tell a witness or an intervenor that he is "done" except under extraordinary circumstances (e.g., repetitive or argumentative testimony which did not exist at the time).

Hearing Officer Gefter's actions at the December 17, 2007 hearings constitute a lack of judicial demeanor and improper rulings. The remedy should be admonition to hearing officer not to make rulings without a sound basis in law and only after following proper procedure. She should be required to give an

apology for her conduct. I also request that, given my long history of involvement in CEC siting cases, I be declared an expert in air quality matters in all future CEC siting hearings, subject to objection by a party to the proceeding and appropriate due process.

**DECLARATION OF
Robert Sarvey**

I Robert Sarvey declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "Robert Sarvey", written over a horizontal line.

Signed 1/11/07