

California Energy Commission
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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the matter of:

QUAIL BRUSH GENERATION PROJECT

No. 11-AFC-03

APPLICANT'S PETITION TO COMPEL
DATA REQUEST RESPONSES FROM
INTERVENOR SUNSET GREENS
HOMEOWNERS ASSOCIATION

Pursuant to California Code of Regulations, title 20, section 1716(d) and (g), on behalf of Quail Brush Genco, LLC (the "Applicant"), we respectfully submit this Petition to Compel Data Request Responses from Intervenor Sunset Greens Homeowners Association ("SGHOA"). The information sought by the Applicant in Data Requests 1 - 18 (Set One) to SGHOA (the "Data Requests") is relevant to the proceeding because it relates to the environmental impacts that SGHOA claims, without support, could result from construction and operation of the proposed Quail Brush Generation Project ("the proposed Project"). The requested information cannot be readily obtained by the Applicant, but should be reasonable available to SGHOA. Accordingly, the Applicant respectfully requests that the Committee compel SGHOA to file complete responses in a timely fashion.

I. BACKGROUND

On September 13, 2012, the Applicant served the Data Requests on the SGHOA through its designated representative Phillip M. Connor. In the Data Requests, the Applicant sought from SGHOA data and rationale underlying: (1) SGHOA's unsupported conclusions regarding noise impacts of the proposed Project; (2) SGHOA's unsupported contentions regarding impacts on property values caused by the proposed Project; (3) SGHOA's speculation that the Applicant and the power purchaser, San Diego Gas and Electric Company ("SDG&E") would operate the proposed Project more often than just during times of peak electricity demand, which would lead to increased air quality and public health impacts; (4) SGHOA's intimations that the proposed Project would increase fire risk to communities located near the Project site; and (5) SGHOA's unsupported conclusions regarding the proposed Project's impact on local traffic.

If SGHOA had been "unable to provide or" wished to "object to providing the information requested," it had the opportunity to so notify the Applicant and the Commission within 20 days of being served with the Data Requests. *See* 20 CCR § 1716(f). SGHOA neglected to do so. Accordingly, responses to the Data Requests were due no later than October 15, 2012, the first weekday following 30 days after submission of the data request. *See* 20 CCR § 1716(f). SGHOA has not provided any response whatsoever to the Data Requests.

II. ARGUMENT

A. The Information Sought in the Data Requests Is Appropriate for the Discovery Process

Any party, including an applicant, in a powerplant licensing proceeding "may request from a party . . . information which is reasonably available to the responding party and cannot otherwise be readily obtained, and which is relevant to the proceeding or reasonably necessary to make any decision on the notice or application." 20 CCR § 1716(d). As explained below, the information sought by the Applicant of SGHOA meets each of these requirements and, accordingly, SGHOA should have provided complete responses to the Data Requests by October 15, 2012. *See id.* § 1716(f).

1. The Information Sought in the Data Requests Cannot Be Readily Obtained by the Applicant, but Is Reasonably Available to SGHOA

As noted above, in the Data Requests, the Applicant sought data and rationale underlying conclusions and suggestions contained in several public statements made by the SGHOA. Because the Applicant is not privy to the rationale underlying the statements or the means by which conclusions were reached by SGHOA, the information sought in the Data Requests cannot be readily obtained by the Applicant outside of the discovery process. In contrast, SGHOA is perfectly situated to explain why it has made various representations in the public record.

2. The Information Sought is Relevant to the Proceeding

In reviewing an Application for Certification (“AFC”), the Commission must determine whether or not approval of a proposed project will comply with the California Environmental Quality Act (“CEQA”). *See* Pub. Res. Code § 25519. CEQA requires evaluation of whether a project would create significant impacts on the environment. *See, e.g., id.* § 21002. Information relating to the proposed Project’s anticipated impacts on the environment are accordingly relevant to this AFC review proceeding. Each request included in the Data Requests at issue relates to environmental impacts that SGHOA alleges may occur as a result of the proposed Project. The Data Requests thus fall within the appropriate scope for discovery.

SGHOA has made numerous statements in the public record regarding anticipated impacts of the proposed Project in the areas of noise, air quality, public health, socioeconomics, and traffic. During the course of the Commission’s consideration of the proposed Project’s AFC, each of these impact areas must be extensively evaluated. *See* 20 CCR §§ 1742, 1742.5, Appendix B (g)(4), (5), (7) - (9). The Commission, it’s Staff, Intervenors, the Applicant, and the general public will be disserved in their attempts to understand the actual impacts of the proposed Project if SGHOA is permitted to make bold, conclusory statements that stand in direct contradiction to evidence presented elsewhere in the administrative record without being compelled to justify its conclusions. In order to provide for a complete record regarding the anticipated impacts of the proposed Project and make a determination on the AFC, the Commission should require responses from SGHOA.

B. SGHOA Has Not Fulfilled its Duties and Responsibilities as a Party in this Proceeding

Section 1712(c) of the Commission’s regulations provide that any entity which requests and is granted Party status in a powerplant licensing proceeding accepts certain duties. First among these is “the responsibility to comply with the requirements for filing and service of documents,” which encompasses the obligation to respond to data requests submitted pursuant to section 1716(d) of the regulations. Although the SGHOA voluntarily sought to become a party to this proceeding, and was granted Party status by the Committee on May 9, 2012, it has not fulfilled the responsibilities that accompany this role. SGHOA should not be permitted to exercise all the rights of a party without also being required to meet the minimum obligations of a party to this proceeding.

III. CONCLUSION

For the reasons stated above, the Applicant respectfully requests that the Committee compel SGHOA to respond to the Data Requests properly served upon it by the Applicant on September 13, 2012.

DATED: November 13, 2012

Bingham McCutchen LLP



By: _____
Ella Foley Gannon
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**APPLICATION FOR CERTIFICATION FOR THE
QUAIL BRUSH GENERATION PROJECT**

DOCKET NO. 11-AFC-03
PROOF OF SERVICE
(Revised 10/29/2012)

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DECLARATION OF SERVICE

I, Margaret Pavao, declare that on November 13, 2012, I served and filed copies of the attached APPLICANT'S PETITION TO COMPEL DATA REQUEST RESPONSES FROM INTERVENOR SUNSET GREENS HOMEOWNERS ASSOCIATION, dated November 13, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: <http://www.energy.ca.gov/sitingcases/quailbrush/index.html>.

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

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. 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 marked **"hard copy required"** or where no e-mail address is provided.

AND

For filing with the Docket Unit at the Energy Commission:

- by sending an electronic copy to the e-mail address below (preferred method); ***OR***
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 11-AFC-03
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.ca.gov

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

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I declare under penalty of perjury under the laws of the State of California 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.



Margaret Pavao