

ELLISON, SCHNEIDER & HARRIS L.L.P.

CHRISTOPHER T. ELLISON
ANNE J. SCHNEIDER
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
GREGGORY L. WHEATLAND
CHRISTOPHER M. SANDERS
LYNN M. HAUG
PETER J. KIEL

ATTORNEYS AT LAW
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE (916) 447-2166 FAX (916) 447-3512

ELIZABETH P. EWENS, OF COUNSEL
BRIAN S. BIERING
TERESA W. CHAN
SHANE E. CONWAY
KATHRYN C. COTTER
JEDEDIAH J. GIBSON
CHASE P. KAPPEL
SAMANTHA G. POTTENGER

May 7, 2010

DOCKET	
09-AFC-3	
DATE	<u>MAY 07 2010</u>
RECD.	<u>MAY 07 2010</u>

Craig Hoffman
Project Manager
Mariposa Energy Project (09-AFC-3)
California Energy Commission
Siting, Transmission and Environmental Protection Division
1516 Ninth Street, MS 15
Sacramento, CA 95814

Dear Mr. Hoffman:

On behalf of the Mariposa Energy Project (“Mariposa Energy”), I am writing in reference to an April 8, 2010 email from Robert Sarvey to Morgan Groover (Development Manager for the Mountain House Community Services District), which you docketed on April 8, 2010. I wish to ensure that the record is clear related to the issues raised in Mr. Sarvey’s email.

Mr. Sarvey’s email states that on March 10, 2010:

“Mariposa Energy (Paula) told your Board of Directors that you had plenty of time to submit you[r] questions (data requests). Five days later I submitted data requests on the Project and Mariposa Energy has objected to the data requests as too late and refuses to answer them even though CEC Staff submitted data requests a few days earlier. I don’t know what action the CEC will take to admonish Mariposa but I want you to be aware that Mariposa Energy has misrepresented the CEC Process to your board at a public meeting.”

Mr. Sarvey’s email makes several serious misstatements that must be corrected.

First, no Mariposa Energy representative told the Board of Directors of the Mountain House Community Services District that the Board had “plenty of time” to submit data requests. Instead, Mariposa Energy’s representative told the Board, in reference to a proposed Resolution of the Board which was under consideration at the March 10 Board meeting, that the Board had additional time to submit the Resolution to the Commission as public comment, not as a data request:

“Do you want to give it [the resolution] to the CEC to inform them of your opposition to our application? And that’s fine. But time isn’t of the essence on that. You’ve got all summer to do that. You have until, you know, the Presiding Member’s Decision comes out.

We’ve got a Preliminary Staff Assessment, Final Staff Assessment, a whole host of hearings. And then finally that is going to come out sometime probably in August.” (March 10, 2010 Board Transcript, pp. 9-10)¹

The Mariposa Energy representative’s comments were limited to the Board’s consideration of the possibility of providing the Commission with information regarding the Board’s position on the project. To suggest that these comments were with regard to data requests is incorrect.

In fact, the transcript of the Board meeting confirms that it was *Mr. Sarvey*, rather than a Mariposa Energy representative, who told the Board that they had additional time to submit *data requests*. Specifically, Mr. Sarvey told the Board:

“You’ve got six to eight weeks to get your data requests in and get the information out of these folks that you want to get. Because after six months after the application is filed the data requests, the discovery period is over.” (Board Transcript, p. 26)

A few minutes later, Mr. Sarvey repeated his statement that the Board still had more time to submit data requests:

“Go to the CEC. But you need to get your questions answered immediately. There’s only six to eight weeks here where you have an opportunity. Once that happens they will be objecting to everything you ask them at the CEC.” (Board Transcript, p. 28)

As Mr. Sarvey acknowledges, the Commission’s regulations (Cal. Code Regs., tit. 20 § 1716) provide that all requests for information shall be submitted no later than 180 days from the date the Commission determines an application is complete, unless the Siting Committee allows requests for information at a later time for good cause shown. The Commission determined the Mariposa Energy Project application to be complete on August 26, 2009. Therefore, the deadline for submitting requests for information was 180 days thereafter, or by February 22, 2010. By the March 10 Mountain House Board Meeting wherein Mr. Sarvey made these representations, the deadline for submitting requests for information had already expired.

¹ At the Applicant’s request, a transcript has been prepared of that portion of the March 10, 2010 Mountain House Board meeting regarding the Mariposa Energy Project. A copy of the transcript will be provided to any party upon request to the Applicant.

May 7, 2010

Page 3

Please also note that the Mountain House Board has been aware of the Project's pending AFC since the summer of 2009. The Mountain House Board was expressly advised that there was a deadline for submitting data requests by the Committee Order that granted the Board's petition to intervene.

Independent of the data request process, Mariposa Energy has made every effort to directly answer questions and requests for information by the Board and members of the Mountain House community. Mariposa Energy made two in-depth presentations to MHCS D, the first to MHCS D staff on April 9, 2010 and the second to the Board on July 8, 2009. Mariposa Energy has had numerous other meetings and communications with MHCS D Board members, including recent meetings on February 4 and March 10, 2010.

Mr. Sarvey's April 8th email incorrectly states that the Applicant has refused to answer the second set of data requests that Mr. Sarvey submitted after the deadline and that once the deadline passed, the Applicant would be "objecting to everything" that parties ask. In fact, on April 2, 2010, six days before his email, the Applicant informed Mr. Sarvey that "Without waiving Applicant's right to object to the untimely requests, the Applicant will respond to the requests in Set 2 except for five requests that are not relevant or for which information is not reasonably available." Mr. Sarvey's late-filed data requests will be answered to the extent they are relevant to any decision the Commission must make in this proceeding. We note that Mr. Sarvey's late-filing of data requests is particularly egregious given that the Board Transcripts clearly demonstrate Mr. Sarvey understands the 180-day discovery time limit but failed to act. The Applicant also received untimely requests from Mr. Dighe, a resident of the Mountain House Community. The Applicant will respond to all of these untimely requests that are relevant and for which information is reasonably available.

After correctly identifying the 180-day discovery deadline in the Commission's regulations, Mr. Sarvey nevertheless misrepresented the factual timeline to the Board, telling the Board that it had an additional six to eight weeks to submit data requests. Given the prior outreach to the Mountain House Board before the deadline and given the Board's familiarity with the Commission's processes, there is no evidence that Mr. Sarvey's misstatements were of any consequence. Nevertheless, it is unfortunate that Mr. Sarvey's email falsely attributes his own misinformation to the Mariposa Energy Project. And it is astonishing that Mr. Sarvey would claim that the Applicant has refused to answer his untimely Second Set of data requests, after he was informed that Mariposa Energy would answer all of the relevant, albeit untimely, data requests. We hope and expect that Mr. Sarvey will be more diligent, and more truthful, in his future communications.

Sincerely,



Greggory L. Wheatland
Ellison, Schneider & Harris L.L.P.

Attorneys for Mariposa Energy Project, LLC

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the)
MARIPOSA ENERGY PROJECT (MEP)) Docket No. 09-AFC-3
)
)
_____)

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on May 7, 2010, I served the attached *Letter to Craig Hoffman Regarding an Email from Robert Sarvey Dated April 8, 2010* via electronic and U.S. mail to all parties on the attached service list.

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



Karen A. Mitchell

SERVICE LIST
09-AFC-3

APPLICANT

Bo Buchynsky
Diamond Generating Corporation
333 South Grand Avenue, #1570
Los Angeles, California 90071
b.buchynsky@dgc-us.com

Morgan K. Groover
Development Director
Mountain House Community
Services District
230 S. Sterling Drive, Suite 100
Mountain House, CA 95391
mgroover@sjgov.org

APPLICANT'S CONSULTANTS

Doug Urry
2485 Natomas Park Dr #600
Sacramento, CA 95833-2975
Doug.Urry@CH2M.com

ENERGY COMMISSION

JEFFREY D. BYRON
Commissioner and Presiding Member
jbyron@energy.state.ca.us

ROBERT B. WEISENMILLER
Commissioner and Associate Member
rweisenm@energy.state.ca.us

COUNSEL FOR APPLICANT

Gregg Wheatland
Ellison, Schneider, and Harris
2600 Capitol Ave., Suite 400
Sacramento, CA 95816-5905
glw@eslawfirm.com

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

Kristy Chew
Advisor to Commissioner Byron
kchew@energy.state.ca.us

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

Craig Hoffman
Siting Project Manager
choffman@energy.state.ca.us

INTERVENORS

Mr. Robert Sarvey
501 W. Grantline Road
Tracy, California 95376
Sarveybob@aol.com

Kerry Willis
Staff Counsel
kwillis@energy.state.ca.us

Jennifer Jennings
Public Adviser
publicadviser@energy.state.ca.us

Rajesh Dighe
395 W. Conejo Avenue
Mountain House, California 95391
dighe.rajesh@gmail.com