

DOCKETED

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application For Certification for the
**STANTON ENERGY RELIABILITY
CENTER**

DOCKET NO: 16-AFC-01

**STANTON ENERGY RELIABILITY
CENTER, LLC'S MOTION TO STRIKE
INTERVENOR CLEAN COALITION'S
OPENING TESTIMONY AND
REBUTTAL TESTIMONY**

INTRODUCTION

SERC, LLC submits this Motion to Strike Intervenor Clean Coalition's Opening Testimony (TN 224025), Opening Testimony Supplement (TN 224026) and Rebuttal Testimony (TN 224086) referred to hereinafter as the Clean Coalition's "Purported Testimony" or "filings". SERC, LLC respectfully requests the Committee exclude Intervenor Clean Coalition's Purported Testimony from the evidentiary record and instead treat all three filings as public comment. The basis for this motion is that:

- The filings are not accompanied by declarations to ensure that they are made under oath as required by the Commission Regulations¹;
- The filings do not identify who the witness will be;
- The filings do not provide a resume or summary of qualifications to ensure that a witness is qualified to make expert opinion testimony;
- The filings contain legal arguments that are not factual expert opinions and therefore are not the appropriate subjects of testimony; and

¹ All references are to the Commission Regulations, Title 20, Division 2 of the California Code of Regulations unless otherwise noted.

- The Opening Testimony includes footnotes and references to documents that have not been docketed in the SERC proceeding.

SERC, LLC has filed this Motion to Strike as soon as possible after Clean Coalition's filings to ensure Clean Coalition has the required 14 days to respond² (July 23, 2018) and to allow the Committee to consider and entertain oral argument at the previously noticed PreHearing Conference on July 25, 2018.

ARGUMENT

I. Intervenor Clean Coalition's Purported Testimony Is Not Testimony Under Oath as Required by Section 1201.

Section 1201 of the Commission Regulations clearly defines testimony as:

- (w) "Testimony" means any oral or written statement made under oath in any proceeding before the commission.

The purpose of this definition is to ensure that statements that purport to be testimony are truthful. Testimony is subject to rebuttal and cross-examination and therefore any statement that is not made under oath cannot be entered into the evidentiary record as testimony. Further statements not made under oath should be given less weight and support than testimony.

None of the documents filed by Intervenor Clean Coalition are accompanied by a Declaration that ensures that the statements they contain were made under oath. Therefore, the purported testimony can only be viewed by the Commission as public comment.

II. Intervenor Clean Coalition's Purported Testimony Does Not Identify Specific Witnesses As Required by Section 1201.

Section 1201 of the Commission Regulations clearly defines a witness as:

- (x) "Witness" means any person who offers testimony in any proceeding before the commission.

² Section 1211.5

None of the documents filed as testimony by Clean Coalition identify who is making the statements and therefore fail to identify the witness. Two of the documents are prepared in a public comment format and appear to be authored by Mr. Doug Karpa, Policy Director and Mr. Miles Maurino, Staff Attorney. The third document is a spreadsheet that does not have a signature identifying whether Mr. Maurino or Mr. Karpa prepared it.

The documents also appear to attribute all statements and opinions to the “Clean Coalition”, which cannot be a witness, and not to either of the two apparent authors. Therefore, all of the documents filed by Intervenor Clean Coalition should be treated as public comment and not testimony.

III. Intervenor Clean Coalition’s Purported Testimony Does Not Provide A Resume Or Summary Of Qualifications Establishing That A Witness Is Qualified To Provide Expert Opinion Testimony.

The purpose of requiring submission of a resume or a summary of qualifications of a witness is to ensure that a witness is qualified to make an expert opinion. The submission also allows the other parties to prepare cross-examination on the qualifications or the basis of the witness’ opinions. Then the Commission can properly weigh competing expert opinions.

No qualifications for any witness were provided with Intervenor Clean Coalition’s Purported Testimony. It appears that Mr. Maurino is acting as legal counsel since he provided his title as Staff Attorney. The Commission does not allow the testimony of counsel because any expert opinion provided by counsel is appropriately treated as legal argument. The Commission allows legal argument in either public comment or in briefs. Therefore Mr. Maurino cannot be the witness.

Although Mr. Karp may be qualified to provide the non-legal argument expert opinions contained in the Purported Testimony, he has not provided evidence of such qualifications.

Therefore, Intervenor Clean Coalition’s Purported Testimony should be excluded from the evidentiary record and treated as public comment.

IV. Intervenor Clean Coalition's Purported Testimony Contains Legal Argument That Should Not Be Included As Testimony.

The Commission's adjudicative process appropriately separates expert opinion testimony and factual testimony from legal argument on strong evidentiary grounds. Legal Argument may reflect the expert legal opinion from an attorney, but it is appropriately the subject of Motions and Legal Briefs and often allowed in public comments.

Intervenor Clean Coalition's Purported Testimony cites case law and makes legal argument relating to Alternatives. These references and conclusions should not be allowed in the record as Testimony. While SERC, LLC objects to the entirety of the Purported Testimony for the reasons stated in this Motion, we provide the following citations of the portions that represent legal argument.

- Opening Testimony - Introduction, Section II.
- Rebuttal Testimony - All

V. Intervenor Clean Coalition's Purported Testimony Contains References To Documents That Have Not Been Docketed In The SERC Proceeding.

The requirement to file Opening and Rebuttal Testimony prior to the PreHearing Conference and the Evidentiary Hearing is to provide all parties the information necessary to fully understand the basis of the statements and opinions made under oath. All testimony should include the filing of any documents upon which it relies with the testimony. Requiring filing of these documents with testimony prevents exhibits being brought to or introduced for the first time shortly before Evidentiary Hearing. Failure to provide documents relied upon in testimony fails to provide all parties with the time necessary to prepare for direct and cross-examination of witnesses.

While SERC, LLC objects to the entirety of the Purported Testimony for the reasons stated in this Motion, if the Committee allows any portion of the Purported Testimony to be treated it as Testimony, the Committee should direct Clean Coalition to docket all referenced material as soon as possible.

CONCLUSION

Clean Coalition intervened in the SERC Proceeding at the latest possible time for intervention. Clean Coalition is a sophisticated Intervenor who has participated in legal proceedings at the California Public Utilities Commission (CPUC) and has participated as an expert witness at the Commission, most recently as this year in the Puente Power Project Proceeding. A sophisticated Intervenor represented by counsel should be required to comply with the regulations and Commission practice. For the reasons stated above, the Committee should exclude Intervenor Clean Coalition's Opening Testimony, Opening Testimony Supplement, and Rebuttal Testimony from the evidentiary record and instead treat them as public comment.

Dated: July 9, 2018

Respectfully Submitted,



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