

**DOCKETED**

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<b>TN #:</b>	224262-1
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**STATE OF CALIFORNIA  
Energy Resources Conservation and  
Development Commission**

<b>In the Matter of: APPLICATION FOR CERTIFICATION OF THE STANTON ENERGY RELIABILITY CENTER</b>	<b>Docket No. 16-AFC-01  Intervenor Clean Coalition</b>
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**CLEAN COALITION RESPONSE TO THE MOTION TO STRIKE AND MOTION FOR  
LEAVE FOR LATE FILING OF WITNESS INFORMATION**

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**CLEAN COALITION RESPONSE TO THE MOTION TO STRIKE AND MOTION FOR  
LEAVE FOR LATE FILING OF WITNESS INFORMATION**

**I. Introduction**

The Clean Coalition hereby submits this Response to the Motion to Strike in reply to DayZen, LLC’s July 9, 2018 Motion to Strike Intervenor Clean Coalition’s Opening Testimony<sup>1</sup> and Rebuttal Testimony<sup>2</sup> (“Motion to Strike”) from the Stanton Energy Reliability Center (“SERC”) proceeding<sup>3</sup> docket log. The issues raised in the Motion to Strike Clean Coalition testimony were based on:

1. Clean Coalition’s Opening Testimony and Rebuttal Testimony (“Clean Coalition filings”) were not accompanied by declarations to show they were made under oath;<sup>4</sup>
2. The filings did not identify who the Clean Coalition witness will be;<sup>5</sup>
3. The filings did not provide a statement of qualifications to ensure that a witness is qualified to make expert opinion testimony;<sup>6</sup>
4. The Opening Testimony included citations to documents that were not docketed in the SERC proceeding;<sup>7</sup>
5. The filings contained legal arguments that were not the appropriate subjects of testimony.<sup>8</sup>

This Response Motion to Strike shows that the Clean Coalition’s recent filings to the California Energy Commission (“CEC”) and our concession of the inclusion of legal analysis have refuted all points raised in the Motion to Strike. Specifically, the Clean Coalition has submitted the following documents to the CEC:

1. A declarations page for each author of Clean Coalition written testimony affirming their writings are true and are subject to the penalty of perjury;<sup>9</sup>

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<sup>1</sup> California Energy Commission, Stanton Energy Reliability Center Application for Certification, 16-AFC-01. (Hereafter, “SERC”), Clean Coalition Opening Testimony TN#: 224025, Docketed: June 29, 2018.

<sup>2</sup> SERC, Clean Coalition Rebuttal Testimony TN#: 224086, Docketed: July 6, 2018.

<sup>3</sup> California Energy Commission, Application for Certification, 16-AFC-01.

<sup>4</sup> SERC, DayZen, LLC Motion to Strike Clean Coalition Testimony, p. 1-2. TN#: 224094. Docketed: July 9, 2018.

<sup>5</sup> Ibid, p. 1-3.

<sup>6</sup> Ibid, p.1-3.

<sup>7</sup> Ibid, p. 2 and 4.

<sup>8</sup> Ibid, p. 1 and 4.

<sup>9</sup> SERC, *Supra* Note 1, TN#: 224175 - Doug Karpa Declaration; and TN#: 224179 - Miles Maurino Declaration. Docketed: July 13, 2018.

2. These filings also identify Clean Coalition Policy Director, Dr. Doug Karpa, as the witness at the Evidentiary Hearing.
3. A statement of qualifications for both the primary author and the assisting author of Clean Coalition written testimony. Dr. Karpa's qualifications show he is properly qualified to testify on the Clean Coalition's modeling work;<sup>10</sup> and
4. All documents cited in the Clean Coalition's Opening Testimony have been submitted to the SERC docket.<sup>11</sup>

The Clean Coalition believes neither Applicant nor staff were prejudiced by the late filing of these documents, because these documents do not alter the substantive content of the testimony and both staff and Applicant were able to file rebuttal testimony without these additional documents. Furthermore, granting this motion would entirely eliminate the ability of the Clean Coalition to present the Commission with the critical information regarding renewable energy alternatives to natural gas peaker plants, which is the primary basis for our intervention. These documents were filed late by mistake because of internal miscommunication and were remedied as soon as the Clean Coalition learned of the failure to properly docket these documents. Should additional leave be required to docket these exhibits, we hereby request leave to do so.

Finally, the Clean Coalition concedes there are legal arguments related to the California Environmental Quality Act ("CEQA") in section II of the Opening Testimony and within the Rebuttal Testimony and we agree to strike those sections from the record. With that, all issues from the Motion to Strike have been resolved. None of the identified issues have prejudiced Applicant or Staff. For these reasons, the Clean Coalition's testimony should not be stricken nor recategorized as public comment.

## **II. Argument**

### **A. The Clean Coalition has provided a declarations page to show their written testimony is under oath.**

The inadvertent error in filing Opening and Rebuttal Testimony without the declarations has been remedied and did not prejudice the applicant. Here, the Clean Coalition's Opening

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<sup>10</sup> SERC, *Supra* Note 1, TN#: 224174 - Doug Karpa Statement of Qualifications; TN#: 224180 - Miles Maurino Statement of Qualifications. Docketed: July 13, 2018.

<sup>11</sup> Attachment A to this Response Motion contains a complete list of the documents cited in our Opening Testimony that we submitted to the CEC on July 13, 2018.

Testimony, Opening Testimony Supplement, and the Rebuttal Testimony were filed in a timely manner, although the testimony was inadvertently submitted without a declarations page to ensure it is under oath as required under CEC Rule § 1201(w). To cure this deficiency, on Friday, July 13, 2018 the Clean Coalition's filed declarations of Dr. Doug Karpa, the author of the testimony attesting to the truthfulness of the written comments, as well as a declaration of Mr. Miles Maurino who assisted in preparation of the testimony.<sup>12</sup> The delay in submission of the declarations pages has not prejudiced the ability of the Applicant to respond substantively to the testimony. With the addition of these declarations to the SERC record, the Clean Coalition comments properly qualify as testimony in the SERC proceeding. Therefore, comments should not be stricken due to a lack of declarations.

**B. The Clean Coalition has provided a statement of qualifications for each author of the Clean Coalition's testimony.**

The inadvertent error in not filing the professional qualifications of Dr. Doug Karpa has been remedied and has not prejudiced the Applicant. Under CEC Rule § 1201(w), *any* oral or *written* statement made under oath in any proceeding is sufficient to qualify as testimony.<sup>13</sup> [Emphasis added.] Here, as both Dr. Karpa and Mr. Maurino contributed to drafting the Clean Coalition's written testimony in the SERC proceeding, on July 13, 2018 both individuals submitted a statement of qualifications to the CEC.<sup>14</sup> The Clean Coalition acknowledges that Dr. Doug Karpa will be the sole oral witness for the Clean Coalition, although the Clean Coalition also submitted the professional qualifications of Mr. Maurino as he assisted in preparation of the written testimony. Again, the delay in submitting Dr. Karpa's resume has not prejudiced the ability of the Applicant to respond substantively to the testimony. With the submission of a statement of qualifications for Dr. Karpa, the Clean Coalition has complied with § 1201(w) to qualify Dr. Karpa for expert opinion testimony.

**C. Clean Coalition Policy Director, Doug Karpa, is properly qualified to be a witness at the upcoming Evidentiary Hearing.**

As the primary author of the Clean Coalition's modeling work and a former scientist and environmental lawyer with a wide range of modeling expertise, Dr. Karpa is the properly

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<sup>12</sup> SERC, *Supra* Note 1, TN#: 224175 - Doug Karpa Declaration; and TN#: 224179 - Miles Maurino Declaration. Docketed: July 13, 2018.

<sup>13</sup> CEC Rules, *Supra* Note 12, § 1201(w).

<sup>14</sup> SERC, *supra* Note 1, TN#: 224174 - Doug Karpa Statement of Qualifications; TN#: 224180 - Miles Maurino Statement of Qualifications. Docketed: July 13, 2018.

qualified witness to testify on the submitted testimony.<sup>15 16</sup> Since Dr. Karpa has adequate expertise and knowledge of the modeling testimony, the nature of Dr. Karpa's qualifications does not alter the substantive content of the testimony, and the Applicant's was able to address the substantive contents of the testimony, the delay in providing a resume did not prejudice the Applicant. Therefore, the testimony of Dr. Karpa should not be stricken.

**D. All documents cited in the Clean Coalition's Opening Testimony have been submitted to the SERC docket.**

All documentation cited in Dr. Karpa's testimony was cited adequately by title, author, year, and, in most cases, universal resource locators (URL) to adequately provide opportunity for Staff and Applicant to review cited materials with modest effort. The delay in providing actual copies of such readily available materials should have had no material effect or prejudice the Applicant's ability to respond to the substance of the testimony. The Clean Coalition has filed copies of fifteen documents (See Attachment A) on Friday, July 13, 2018, and one additional document on Monday July 16, 2018 to the CEC. With the addition of these documents to the SERC docket, the complete basis of the Clean Coalition's testimony is now on the record. Therefore, the argument made in the Motion to Strike regarding the Clean Coalition's citations being off the record is moot.

**E. The late filing of these documents does not prejudice the applicants, while striking the testimony would virtually eliminate the Clean Coalition's basis for intervention**

Neither the Applicant nor staff were prejudiced by the late filing of these documents, because these documents do not alter the substantive content of the testimony and both staff and Applicant were able to file rebuttal testimony without these additional documents. As noted, the cited references were readily available as cited even if copies of the documents were not docketed, so Applicant and Staff would not be unreasonably inconvenienced by having to secure the documents through a search rather than obtaining them from the docket. Neither the absence of a resume or declaration shaped the substance of the testimony in any meaningful way. Given the substantive nature of that rebuttal and the appearance that the nature of that testimony would

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<sup>15</sup> CEC Rules, *Supra* Note 12, § 1201(x).

<sup>16</sup> CEC Rules, *Supra* Note 12, § 1212(a).

not be different had these documents been docketed earlier, striking the testimony is unwarranted.

Furthermore, granting this motion would entirely eliminate the ability of the Clean Coalition to present the Commission with the critical information regarding renewable energy alternatives to natural gas peaker plants, which is the primary basis for our intervention. Thus, striking the testimony would fatally undermine our key purpose in intervention.

Finally, these documents were filed late by mistake because of internal miscommunication regarding the docketing process and were remedied as soon as the Clean Coalition learned of the failure to properly docket these documents. Should additional leave be required to docket these exhibits, we hereby request leave to do so.

**F. The Clean Coalition concedes there is one section in their Opening Testimony and one paragraph in their Rebuttal Testimony that qualify as legal argument.**

The Clean Coalition agrees to strike the legal argument from the prepared testimony without conceding rights to raise these legal arguments in subsequent briefing. The Clean Coalition's Opening Testimony, Section II "The list of alternatives in the Final Staff Assessment is unreasonably and illegally narrow." contains citations to CEQA regulations regarding alternatives analysis. Also, in the final paragraph of their Rebuttal Testimony, the Clean Coalition provided legal analysis regarding alternatives analysis being guided by the "rule of reason."<sup>17</sup> The Clean Coalition concedes both sections as legal argument and has attached a redlined version of their Opening Testimony and Rebuttal Testimony with the legal analysis removed (Attachment B and C). With the revisions to the testimony as indicated in the redlined versions, the legal arguments have properly been excluded from consideration.

**III. Conclusion**

The recent CEC filings by the Clean Coalition and stipulation to strike legal arguments have now resolved all issues in the Motion to Strike. Neither staff nor Applicant have been materially prejudiced by any of the now-corrected omissions. Therefore, the Clean Coalition's testimony respectfully requests that the motion to strike be denied, except for the legal analysis as identified above.

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<sup>17</sup> SERC, *Supra* Note 1, Clean Coalition Rebuttal Testimony, TN#: 224086. Docketed: July 6, 2018.