

STATE OF CALIFORNIA
**Energy Resources Conservation
and Development Commission**

DOCKET	
09-AFC-3	
DATE	FEB 18 2010
RECD.	FEB 22 2010

In the Matter of:)
)
Application for Certification for the *MARIPOSA*)
ENERGY PROJECT (MEP))
)
_____)

Docket No. 09-AFC-3

**OBJECTION TO DATA REQUEST 4
OF
ROBERT SARVEY**

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STATE OF CALIFORNIA

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On January 29, 2010, Mariposa Energy, LLC (“Applicant”) received Robert Sarvey's Data Request Set 1. Except as noted below, the Applicant will respond to these requests on or before February 28, 2010. There is, however, a portion of one specific question to which the Applicant objects. Pursuant to Title 20, California Code of Regulations, Section 1716(f), Applicant hereby objects to a portion of Mr. Sarvey's Data Request 4.

Section 1716 of the Commission's regulations (Cal. Code Regs., tit. 20 § 1716) contains the basic framework for information exchanges between parties in licensing proceedings: “A party may request from an Applicant ... information which is reasonably available to the Applicant which is relevant to the application proceedings or reasonably necessary to make any decision on the ... application.” (Cal. Code of Regs., tit. 20 § 1716(b).) The Applicant may then answer or object to the request. If the Applicant objects, the requesting party may then forgo the request, seek alternative means of obtaining the desired information, or petition for an Order directing the Applicant to provide the information. In considering the reasonableness of a data

request, the Commission evaluates whether the information sought appears to be reasonably available to the Applicant and whether the requested information is relevant and reasonably necessary for the Commission to reach a decision on the Application.

Mr. Sarvey's Data Request 4 states:

“Please provide all correspondence with Alameda County, Memos. [sic] Emails, Records of conversations, etc. related to the Projects [sic] compatibility with the Williamson Act.”

The Applicant will provide Mr. Sarvey with a copy of all correspondence that the Applicant has provided to Alameda County related to the Williamson Act. However, the Applicant objects to that portion of the request that asks for "memos, emails, records of conversations, etc." The Applicant objects to this request on the grounds that it is burdensome and not reasonably necessary to make a decision on this Application. Further, the Applicant objects to the request to the extent it seeks any attorney-client privileged materials as those materials are exempt from production.

There is no showing that the requested information¹ is relevant to or reasonably necessary for any decision the Commission must make. If Alameda County expresses an opinion or recommendation in this proceeding relating to matters upon which the Commission must make a decision, it would be reasonable for a Party such as Mr. Sarvey to ask the County for information that formed the basis of this opinion. On the other hand, it is not reasonable for a Party to make a blanket request regarding all discussions that may take place between another Party and a governmental agency without making a showing that such discussions form the basis of opinions that have been made a part of the record in this proceeding. Absent the County expressing its

¹ We are not sure whether the request seeks "all emails, memos and records of conversation" related to the Williamson Act that are held within the County, or between the Applicant and County, or by the Applicant about the County, or all of the above. And we have no idea what "etc" means. However, assuming that Mr. Sarvey's request is limited to emails, memos and records of conversation between the Applicant and the County, this request is overly broad and irrelevant.

views in this record, any conversations, emails or "etc" that may have taken place simply has no relevance to any decision that this Commission must make. Blanket or "dragnet" data requests such as this serve only to harass the Applicant and to delay the proceeding. Finally, the Commission should follow its precedent to protect any attorney-client privileged materials.

Dated: February 18, 2010

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By  _____

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PROOF OF SERVICE

I, Karen A. Mitchell, declare that on February 18, 2010, I served the attached *Objection to Data Request 4 of Robert Sarvey* 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

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