

BEFORE THE HEARING BOARD  
OF THE  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA

|  |   |                               |
|--|---|-------------------------------|
|  | ) | Docket Nos. 3350 and 3352     |
|  | ) | (Consolidated)                |
| In the Matter of the Appeal of the City of   | ) |                               |
| Morgan Hill, Santa Teresa Citizen Action     | ) | PETITION FOR WRITTEN          |
| Group, DemandCleanAir and Californians for   | ) | STIPULATION AND               |
| Renewable Energy (CARE) from the Grant       | ) | WAIVER OF PARTIES'            |
| of an Air Permit Based on Application        | ) | RIGHTS TO REQUEST             |
| Number 27215 to Calpine Corporation and      | ) | DISQUALIFICATION              |
| Bechtel Enterprises Holdings, Inc. for their | ) |                               |
| Proposed Metcalf Energy Center.              | ) | By Calpine Corporation and    |
|  | ) | Bechtel Enterprises Holdings, |
|  | ) | Inc.                          |

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Pursuant to the information conveyed during the August 17, 2001 teleconference in this matter regarding Dr. Alvin Greenberg's disclosure of a contractual relationship between his firm, R.S.A., and the California Energy Commission ("CEC") for hazardous materials consulting services as it relates to power plant siting, Intervenor and permit holder Calpine Corporation and Bechtel Enterprises Holdings, Inc. ("Calpine/Bechtel") respectfully submits this Petition for Written Stipulation and Waiver of Parties' Rights to Request Disqualification.

Calpine/Bechtel does not seek the disqualification/recusal of Dr. Greenberg. Further, given that this is a threshold issue and assuming no other party seeks to disqualify or request the recusal of Dr. Greenberg, Calpine/Bechtel hereby petitions the Board for an order requiring all parties to execute a written stipulation and waiver of their rights to request the recusal, disqualification and/or withdrawal of Dr. Greenberg.

Such a stipulation and waiver should acknowledge that Hearing Board Rule 5.13 sets the standard for determining whether disqualification is warranted in a Hearing Board proceeding. Specifically, this Rule requires the Board member to disqualify him/herself and withdraw from a case in which "he or she cannot accord a fair and impartial hearing or consideration." This Rule further provides that "[a]ny party may

request the disqualification of any member by filing an affidavit before the submission of the case, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.”

Because this is a threshold matter, this issue should be the first order of business at the August 30, 2001 hearing, before the Board addresses the pre-hearing motions to dismiss and briefings concerning the appropriate standard of review.

The potential for a conflict of interest arises from Dr. Greenberg’s testimony before the California Energy Commission (“CEC”) on a subject that is related to the petitions filed by Santa Teresa Citizen Action Group (“STCAG”) and Californians for Renewable Energy (“CARE”). In testimony before the CEC on January 19, 2001, Dr. Greenberg presented his analysis of the potential risks associated with the handling of aqueous ammonia, which is used in conjunction with the selective catalytic reduction system proposed for the Metcalf Energy Center. (1/19/01 RT 217:9 - 218:16). During that same testimony, Dr. Greenberg specifically commented upon testimony submitted by the Coyote Valley Research Project (“CVRP”) on this subject, and expressly disagreed with CVRP’s comments on this issue. (1/19/01 RT 218:17 - 226:5).

The STCAG appeal to the BAAQMD Hearing Board incorporates, by reference, the STCAG appeal filed with the US EPA Environmental Appeals Board (“EAB”). (STCAG BAAQMD Appeal, p. 2). The STCAG EAB appeal incorporates, by reference, the comments submitted by CVRP regarding the FDOC for the Metcalf Energy Center. (STCAG EAB Petition, p. 3, Exhibit H). The CVRP comments regarding the FDOC for the Metcalf Energy Center identify ammonia “as a hazardous substance, and the transportation and handling of ammonia can result in accidental releases that adversely impact the public.” (CVRP FDOC comments, p. 26). This issue was raised in CVRP’s comments as a collateral environmental impact associated with the BAAQMD’s then-proposed BACT determination.

The CARE appeal to the BAAQMD Hearing Board incorporates, by reference, the CARE appeal filed with the US EPA EAB. (CARE letter to Ellen Garvey, June 14, 2001, p. 1). The CARE EAB appeal specifically identifies as an issue the “health & safety and air pollution impacts from the use of ammonia as part of the technology to control NOx emissions.” (CARE EAB appeal, p. 43). This issue was raised by CARE in

the context of collateral environmental impacts associated with the BAAQMD's then-proposed BACT determination.

Although some might view this issue and its relationship to the appeals before the BAAQMD Hearing Board as minor, it is nonetheless a fact that Dr. Greenberg has already considered and rendered a professional opinion on one of the issues contained in both the STCAG and CARE petitions before the Hearing Board.

Again, Calpine/Bechtel does not seek the disqualification/recusal of Dr. Greenberg. However, because of these factual circumstances, Calpine/Bechtel requests, if no one else seeks Dr. Greenberg's disqualification, that this Hearing Board as a threshold matter require the submission of knowing, intelligent and written stipulations and waivers of the parties' rights to seek disqualification, recusal and/or withdrawal of Chairman Greenberg as the first order of business for the August 30, 2001 hearing. If all the parties do not agree to the requested stipulations and waivers, then the Hearing Board should hear and determine any motions concerning the disqualification/recusal of Dr. Greenberg before proceeding to other matters. Because this is a threshold matter, this issue should be the first order of business at the August 30, 2001 hearing, before the Board addresses the pre-hearing motions to dismiss and briefings concerning the appropriate standard of review.

Respectfully submitted by:

Dated: August 28, 2001

ELLISON, SCHNEIDER & HARRIS LLP

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