



**FILED**  
04-29-11  
04:23 PM

**Smith, Richard**

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**From:** Gruen, Darryl  
**Sent:** Monday, October 11, 2010 3:46 PM  
**To:** Smith, Richard  
**Subject:** FW: A.07-04-013

Hi Richard:

I'm reviewing your draft ruling now, and remembered I agreed to send the email below to you.

Darryl Gruen  
Staff Counsel  
California Public Utilities Commission  
505 Van Ness Ave. - San Francisco, CA 94102  
(415) 703-1973 - [djg@cpuc.ca.gov](mailto:djg@cpuc.ca.gov)

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**From:** Gruen, Darryl  
**Sent:** Tuesday, September 28, 2010 1:52 PM  
**To:** 'Colin Bailey'  
**Cc:** Chris J. Butcher  
**Subject:** RE: A.07-04-013

Dear Mr. Bailey:

With the publication of the FEIR, the record is closed. However, as a party to the proceeding, you will have a chance to comment on the Proposed Decision.

Darryl Gruen  
Staff Counsel  
California Public Utilities Commission  
505 Van Ness Ave. - San Francisco, CA 94102  
(415) 703-1973 - [djg@cpuc.ca.gov](mailto:djg@cpuc.ca.gov)

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**From:** Colin Bailey [<mailto:cbailey@lsnc.net>]  
**Sent:** Tuesday, September 28, 2010 11:51 AM  
**To:** Gruen, Darryl  
**Cc:** Chris J. Butcher  
**Subject:** Re: A.07-04-013

4/13/2011

We used the term "CEQA record" as shorthand for the body of information that will be before or available to the California Public Utilities Commission for its review up to and when making its decision on certification of the Final Environmental Impact Report.

Thank you, again, Mr. Gruen, for your prompt attention to this matter.

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Colin Bailey  
Staff Attorney  
Legal Services of Northern California  
515 12th Street  
Sacramento, CA 95814  
Phone: (916) 551-2138  
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On Tue, Sep 28, 2010 at 10:53 AM, Gruen, Darryl <[darryl.gruen@cpuc.ca.gov](mailto:darryl.gruen@cpuc.ca.gov)> wrote:  
Thank you Mr. Bailey:

Before addressing the question, I need an exact definition of what you mean by "CEQA record".

Sincerely,

Darryl Gruen  
Staff Counsel  
California Public Utilities Commission  
505 Van Ness Ave. - San Francisco, CA 94102  
(415) 703-1973 - [djg@cpuc.ca.gov](mailto:djg@cpuc.ca.gov)

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**From:** Colin Bailey [<mailto:cbailey@lsnc.net>]  
**Sent:** Tuesday, September 28, 2010 10:45 AM

**To:** Gruen, Darryl  
**Cc:** Chris J. Butcher  
**Subject:** Re: A.07-04-013

Thank you for your response, Mr. Gruen. My question is still pending. I look forward to your answer, preferably today, so that I may follow up as quickly as possible with others who are also waiting on the answer.

Thank you kindly.

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On Tue, Sep 28, 2010 at 10:37 AM, Gruen, Darryl <[darryl.gruen@cpuc.ca.gov](mailto:darryl.gruen@cpuc.ca.gov)> wrote:

Dear Mr. Bailey:

I trust you received my out of office message in response to your email below. Did you follow up with Peter Allen regarding your question while I was gone, or is your question still pending?

Darryl Gruen  
Staff Counsel  
California Public Utilities Commission  
505 Van Ness Ave. - San Francisco, CA 94102  
(415) 703-1973 - [djg@cpuc.ca.gov](mailto:djg@cpuc.ca.gov)

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**From:** Colin Bailey [<mailto:cbailey@lsnc.net>]  
**Sent:** Monday, September 20, 2010 10:04 AM  
**To:** Gruen, Darryl  
**Cc:** Chris J. Butcher

**Subject:** Re: A.07-04-013

Dear Mr. Gruen:

I write to seek clarification of your e-mail below. Specifically, I ask you to please articulate at what point in the above referenced proceeding you believe the CEQA record closes or closed.

You will recall that I asked you about the status of the CEQA record in direct response to Mr. Chiang's unequivocal statement that the CEQA record had closed as of the release of the Final EIR

and that he was unaware of any protocol under which the CPUC could receive additional comments or information that would be included as part of the CEQA record. Both in my initial e-mail to you and in our phone conversation last week, I stressed that I needed a clear answer regarding the status of the CEQA record so that I could ask my experts to perform additional work with a good faith expectation that their work would be eligible for compensation under the CPUC's rules governing expert awards.

Understanding that I need to have clarity on this matter before my client is irremediably disadvantaged by the uncertainty, you committed in our phone conversation to provide me with a clear statement about the status of the CEQA record upon which I could confidently rely. Your response directs me "to the scoping memos provided in this proceeding for guidance."

I read the scoping memos in light of Mr. Chiang's statement before I asked you to provide guidance. If I thought the scoping memos were clear about when the CEQA record closes, I would not have asked the question notwithstanding Mr. Chiang's clear statement that it closed as of the release of the Final EIR. After receiving your response, I carefully re-read every word of each of the three scoping memos. While they discuss the convergence of the CEQA and CPCN records, I do not read them to answer the question of at what stage of the proceeding the CEQA record closes. Specifically, the January 21, 2010 Amended Scoping Memo addresses, at page 5, the scope of supplemental evidentiary hearings as they relate to the environmental review process and makes reference to briefs that will follow the supplemental hearings and may discuss the adequacy of the EIR and/or CEQA process. However, neither the January 21, 2010 Amended Scoping Memo nor any of the other scoping memos appears to preclude the submission of new information or comments to the Energy Division about the EIR. Nevertheless, the question remains whether such information, if submitted now or in the final briefs, would be part of the CEQA record.

Clearly, your response can mean nothing other than that you believe the scoping memos answer the question about the status of the CEQA record. This being the case, I ask you to please articulate unambiguously when you believe the scoping memos indicate that the CEQA record closes. Additionally, I ask that you provide citations, including the page and section numbers, to those specific sentences within any of the scoping memos that you believe clearly speak to whether the CEQA record is presently open or closed.

As you said you understood in our conversation last week, I fear we are getting dangerously close to that time when not having a clear answer regarding the status of the CEQA record will prejudice my client. Given that you appear to have already done the research on this point and come to your conclusion, however ambiguously conveyed, I ask that you respond to the question of whether the CEQA record is presently closed, no later than close of business on Tuesday, September 21, 2010, with, at minimum, a statement that either "Yes, the CEQA record is presently closed" or "No, the CEQA record is not presently closed."

Thank you for your prompt attention to this matter.

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On Thu, Sep 16, 2010 at 2:01 PM, Gruen, Darryl <[darryl.gruen@cpuc.ca.gov](mailto:darryl.gruen@cpuc.ca.gov)> wrote:

Dear Mr. Bailey:

Regarding your questions included in this email, I refer you to the scoping memos provided in this proceeding for guidance.

Sincerely,

Darryl Gruen  
Staff Counsel  
California Public Utilities Commission  
505 Van Ness Ave. - San Francisco, CA 94102  
(415) 703-1973 - [djg@cpuc.ca.gov](mailto:djg@cpuc.ca.gov)

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**From:** Colin Bailey [mailto:[cbailey@lsnc.net](mailto:cbailey@lsnc.net)]  
**Sent:** Tuesday, September 14, 2010 4:59 PM  
**To:** Gruen, Darryl  
**Cc:** Gruen, Darryl; Chris J. Butcher  
**Subject:** Re: A.07-04-013

Dear Mr. Gruen:

Thank you for speaking with me this afternoon. This message confirms our phone conversation in which you indicated you would attempt to have a written response to my query below about the status of the CEQA record by this Friday, September 17, 2010. Simply put, the question is, Is the CEQA record closed? And, if not, at what point will it close?

Please note, I have copied my co-counsel, Chris Butcher, from Remy, Thomas, Moose and Manley (RTMM) on this e-mail. Please kindly copy Mr. Butcher on your response.

Thank you.

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Colin Bailey  
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On Mon, Aug 30, 2010 at 6:01 PM, Colin Bailey <[cbailey@lsnc.net](mailto:cbailey@lsnc.net)> wrote:

Dear Mr. Gruen:

I hope this message finds you well. I represent AGENA in the permit proceeding identified above.

Eric Chiang returned my call a couple of weeks ago and, in the course of clarifying the EIR, he told me that the CEQA record had closed as of the release of the FEIR. Since that fact is determinative of whether I can, in good faith, ask my experts to prepare and submit additional information with any expectation of compensation from the CPUC for that work, I would appreciate your written confirmation of the closure of the CEQA record as soon as possible.

If the CEQA record is, in fact, not closed, please let me know immediately, so I can, again, engage my experts to further develop my client's case. Please advise as soon as possible so that, if the opportunity for my client to submit information on the record still exists, it is not subject to undue delay.

Thank you for your prompt response.

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<End of Attachment 1>

4/13/2011