

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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| Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010. | I.12-01-007<br>(Filed January 12, 2012)<br>(Not Consolidated)  |
| Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.  | I.11-02-016<br>(Filed February 24, 2011)<br>(Not Consolidated) |
| Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with Higher Population Density.  | I.11-11-009<br>(Filed November 10, 2011)<br>(Not Consolidated) |
| Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.  | R.11-02-019<br>(Filed February 24, 2011)<br>(Not Consolidated) |

**OPPOSITION TO MOTION OF THE CONSUMER PROTECTION AND  
SAFETY DIVISION TO SUSPEND PROCEEDINGS**

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October 9, 2012

## **OPPOSITION TO MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION TO SUSPEND PROCEEDINGS**

Pursuant to Rule 11.1<sup>1</sup> of this Commission's Rules of Practice and Procedure CALifornians for Renewable Energy, Inc. (CARE) respectfully objects in opposition to the October 5, 2012 Motion of the Consumer Protection and Safety Division (CPSD) requesting a suspension of all procedural dates and activities in all four of the above-captioned dockets, purportedly "in order to facilitate good-faith negotiations among the parties toward a stipulated outcome."

### **Introduction**

In violation of Rule 11.1 governing Motions and Rule 12.1 regarding Proposals of Settlement in the Commission's Rules of Practice and Procedure CPSD is abusing the Commission's own Rules to thwart a federal investigation of facts under discovery in the federal litigation in the United States District Court for the Central District for California; SOLUTIONS FOR UTILITIES, INC., et al. Plaintiffs, vs. CALIFORNIA PUBLIC UTILITIES COMMISSION, et al. Defendants; Case No. CV11-04975 SJO (JCGx).

Principles of CARE are anticipated witnesses for Plaintiff, and so identified in Plaintiff's voluntary disclosure. Evidence concerning potential witnesses is clearly discoverable, *inter alia* for defensive discovery and to establish context for CPUC interactions with CARE and its principals on the identical issues posed in the SFUI complaint, without limitation except for any timely asserted well-founded [if any] privileges. Clearly, among other things, Defendants CPUC have failed to produce any electronic documents; any third party involved discussions or recipients of documents concerning

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<sup>1</sup> 11.1. (Rule 11.1) Motions.

(a) A motion is a request for the Commission or the Administrative Law Judge to take a specific action related to an open proceeding before the Commission.

(b) A motion may be made at any time during the pendency of a proceeding by any party to the proceeding. A motion may also be made by a person who is not a party if it is accompanied by a motion, pursuant to Rule 1.4, to become a party.

(c) Written motions must be filed and served. The Administrative Law Judge may permit an oral motion to be made during a hearing or conference.

(d) A motion must concisely state the facts and law supporting the motion and the specific relief or ruling requested.

(e) Responses to written motions must be filed and served within 15 days of the date that the motion was served, except as otherwise provided in these Rules or unless the Administrative Law Judge sets a different date.

Responses to oral motions may be made as permitted by the Administrative Law Judge.

Plaintiff; and any anything else which Plaintiff cannot identify because of the lack of specificity in responses and objections. CPUC's shotgun, boilerplate privilege and other objections have been waived. As noticed October 6, 2012; CPUC Commissioners Florio, Simon, and Peevey are scheduled to be deposed as noticed by Plaintiff's counsel in the case to take place November 2, 2012 in Corte Madera California. CARE alleges CPSD seeks to preclude lawful discovery that touches on this case regarding principals of CARE and principals of CPUC including the three Commissioners who are subject to being deposed in a federal court proceeding.

Regarding the ALJ's approval of CPSD's motion [before Parties had any opportunity to even weigh in] NASDAQ reported October 8, 2012<sup>2</sup> "Assemblyman Jerry Hill of San Mateo and San Bruno Mayor Jim Ruane [] urged the judge to continue open hearings. Hill said the suspension would shield the talks from public scrutiny. "This is turning into a backroom deal," Hill said. "We want a transparent, open discovery of evidence so that in the future public policy can be determined to prevent this from happening and that can't be done behind closed doors.""

CARE agrees with Assemblyman Hill; but in clear violation of procedural due process rights of the Parties; with the lack of proper notice to the Parties by the ALJ sent on a Saturday; and the violations of the Commission's own Rules of Practice and Procedure; CPSD's motion for stay was granted; albeit until October 15, 2012. This violated CARE's rights to procedural due process; amongst many other procedural and statutory rights. But this is not surprising; but appears to be a pattern and practice of prejudice to CARE.

### **Grounds for Objections and Opposition**

CARE objects to and opposes the CPSD Motion because CPSD knows of ongoing Case No. CV11-04975 SJO (JCGx) discovery regarding CARE; yet seeks to abuse the Commission's Settlement processes; so as to protect the CPUC and its Commissioners from lawful federal court discovery. According to the Commission's own October 1,

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<sup>2</sup> See <http://www.nasdaq.com/article/tensions-rise-over-hearings-on-pge-san-bruno-pipeline-explosion-20121008-00875#.UHOAB64ye1c>

2012 filing of the STIPULATED DISCOVERY MEMORANDUM: COMBINED MOTION TO COMPEL DISCOVERY RE PLAINTIFF’S REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, FIRST SET, TO CPUC AND IN NOTICE OF TAKING CPUC DEPOSITION [Fed.R.Civ.P. 34] where the Commission states [at P. 37 ll 1-3; P. 57 ll 9-11; and P. 110 ll 13-14] “Some of these efforts have been subject to settlement and confidentiality rules apply. See, e.g., CPUC Rules of Practice and Procedure, Article 12, Settlements.” Is the CPUC is trying to hide something?

According to KQED news<sup>3</sup> “San Bruno Mayor Jim Ruane says PG&E and the CPUC owe it to the people of San Bruno to conduct public hearings." This maneuvering overshadows the fact that eight people lost their lives. Thirty-eight homes were destroyed, a neighborhood in turmoil, a city that won’t recover--if it recovers--for many many years. That’s what bothers me," Ruane says.” Therefore the CPSD is willing to use and abuse its own rules to thwart a federal investigation of facts under discovery in the federal litigation in the United States District Court for the Central District for California; Case No. CV11-04975 SJO (JCGx) what other reason could there be?

CARE objects to and opposes the CPSD Motion because Rule 11.1 (d) “A motion must concisely state the facts and law supporting the motion and the specific relief or ruling requested.” But the only fact purportedly presented in CPSD’s motion was that “In recent weeks, the parties in these four proceedings have commenced negotiations that have the potential to produce a stipulated outcome, with appropriate remedies for consumers.” Since CARE is a Party in two of the above captioned proceedings the fact that CPSD failed to contact CARE’s counsel of record Martin Homec, demonstrates this is a matter of factual dispute. A mere statement that “parties in these four proceedings have commenced negotiations” does not make it true or undisputed. Who are these so-called Parties?

CARE objects to and opposes the CPSD Motion because pursuant Proposal of Settlements [i.e., “stipulations”] Rule 12.1(a) “Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing,

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<sup>3</sup>[http://www.kqed.org/news/story/2012/10/08/109114/cpuc\\_pge\\_want\\_time\\_to\\_work\\_on\\_san\\_bruno\\_settlement?category=bay+area](http://www.kqed.org/news/story/2012/10/08/109114/cpuc_pge_want_time_to_work_on_san_bruno_settlement?category=bay+area)

propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding...[]...The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged.”

But CPSD’s Motion for Settlement fails propose “the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding” nor did it “contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged.” The offer of settlement doesn’t even say who the Parties are and what disputes they are settling.

**Why is CPUC even considering a settlement in addition too  
With-holding evidence in Case No. CV11-04975 SJO (JCGx)??**

On September 6, 2012 CPSD put up unqualified witness Margaret Felts who’s cross examination by PG&E begins on page 199 of the record transcript. P. 206 [to P. 220] includes the cross examination of CPSD’s Ms. Felts' where she knowingly misrepresented her status under oath as lawyer; throwing the entire evidentiary hearing in PG&E’s favor.

27 MR. MALKIN: Well, your Honor, this  
28 witness has told us she is advocating that

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1 the Commission find PG&E guilty of this  
2 Rule 1 violation. I am probing her thought  
3 processes and what underlies her advocacy to  
4 the Commission.

5 And to the extent that Mr. Cagen is  
6 concerned that we're sliding over into legal  
7 opinions, as you heard yesterday, Ms. Felts  
8 is in fact a lawyer. So the objection that  
9 it's a legal issue being addressed today that

10 a nonlawyer, which was raised with  
11 Ms. Halligan yesterday, doesn't apply.

12 ALJ YIP-KIKUGAWA: Okay. I'm going to  
13 allow it. Go ahead.

14 MR. MALKIN: I'm sorry. Could you  
15 please read back the question?

16 (Record read.)

17 MR. MALKIN: Well, without the prior  
18 question, that doesn't make any sense, so  
19 let me restate.

20 A Okay.

21 Q So are you saying that if you  
22 submit incorrect information to the  
23 Commission and then you later correct it,  
24 then it's not a Rule 1 violation?

25 A I think there are circumstances  
26 where that would be true. And there are also  
27 circumstances where it would not be true. So  
28 there would have to be detail that's specific

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1 to the situation.

2 Q One of the circumstances in which  
3 in your view it would not be true is that you  
4 concluded that the first incorrect statement  
5 was intentionally incorrect; is that right?

6 A Not sure I understand that  
7 statement that you just made.

8 Q All right. I'll try and simplify  
9 the question.

10           You just said that in some  
11 circumstances, correcting incorrect  
12 information provided to the Commission would  
13 mean there was no Rule 1 violation, and in  
14 other circumstances that wouldn't be  
15 the case. Did I get that right?

16       A   Yes.

17       Q   I was trying to probe  
18 the circumstances under which it would not be  
19 the case. And my question was, would it not  
20 be the case in a situation where you  
21 concluded that the original incorrect  
22 statement was intentionally incorrect?

23       A   I think that's a double negative,  
24 but I'll just stick with my original  
25 statement because I'm not sure how you're  
26 rephrasing it.

27       Q   Let me put it to you as  
28 a hypothetical then that maybe avoids any

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1 negatives.

2       A   Okay.

3       Q   Perhaps not.

4           Assume information submitted to the  
5 Commission that you, Ms. Felts, have  
6 concluded was intentionally incorrect.  
7 Assume further that the utility, let's pick  
8 a hypothetical utility say PG&E, later  
9 corrects that information. Is that

10 a situation in which you believe there is or  
11 is not a Rule 1 violation?

12 A Without it being a specific  
13 example, I don't think we -- I can answer  
14 that question because this particular  
15 instance was one where you submitted  
16 a response to us which we took on faith would  
17 be an accurate response. I did not assume  
18 that it was, you know, a false representation  
19 in the first instance.

20 We went for months with the  
21 assumption that that was the circumstances  
22 and that you looked at the video recorder,  
23 you determined that it had overwritten  
24 the video, and we accepted that explanation.  
25 Then months later, you came back and said  
26 the recording never existed in the first  
27 place, which begged us to look at how that  
28 could have happened, how you could have

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1 observed the recording in the first place and  
2 determined that it had been overwritten and  
3 was a newer recording if in fact it had never  
4 been written in the first place. So, which  
5 is it? And that's what led us to  
6 the conclusion of a Rule 1 violation.

7 Q At the start of your answer, you  
8 said that it would depend whether, when it  
9 was first presented, it was something that



10 you would believe was correct; is that right?

11 A In this circumstance, that was

12 the situation.

13 Q Okay.

14 A I'm sure there are all kinds of

15 ways that you can create a Rule 1 violation.

16 Q I'm sure there are, and we may

17 explore some of those. But right now I want

18 to focus on kind of your understanding, where

19 you're coming from since you're the one

20 advocating them in this case.

21 So, but if isn't the case that

22 whenever PG&E submits information to you, you

23 believe it to be correct?

24 A I wouldn't necessarily believe

25 anything to be incorrect if you are

26 responding to a data response and I -- you

27 know, my general view is that you are

28 providing accurate and complete information.

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1 Q And that's the same presumption you

2 want the Commission to have when you submit

3 material to the Commission as you have in

4 your testimony; correct?

5 A Yes.

6 Q And the Commission would take at

7 face value that what you have put in your

8 testimony is all true and correct; right?

9 A Yes.

10 Q So, the kind of base predicate for  
11 any Rule 1 violation is something that  
12 a party -- that's Rule 1 as we see there  
13 applies to anybody, any person.  
14 The predicate for Rule 1 violation is that  
15 a person or an entity submits information to  
16 the Commission that turns out not to be true;  
17 right?

18 A Well, I think there is an  
19 intentional element to that.

20 Q Aha. So in advocating these Rule 1  
21 violations, you are expressing in effect an  
22 opinion as to the state of mind of PG&E when  
23 it submitted this data response?

24 A I am.

25 Q And is that an engineering  
26 judgment?

27 A No.

28 Q Is it a legal judgment?

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1 A I think it's something that comes  
2 from just looking at the records. It doesn't  
3 require any engineering judgment other than  
4 a basic understanding of how recordings were  
5 recorded.

6 Q So, doesn't require any special  
7 skill to be able to make the judgment that  
8 you have put forward in advocating that  
9 Rule 1 violation; is that right?

10 A Well, we look at the responses and  
11 look at the rules and apply the rules to  
12 the responses. And in this particular  
13 instance, this is how it comes out.

14 Q So is the answer to my question,  
15 no, it does not require any special skill,  
16 just reading the rule, reading the response  
17 and making a judgment?

18 A I don't know how to answer that  
19 other than I guess it requires a skill at  
20 that level to be able to read and understand  
21 what's going on.

22 Q And that's something presumably all  
23 of us in this room can do?

24 A I think in this particular  
25 instance, it requires no other skill than  
26 that.

27 Q And I guess then it would be true  
28 that to judge other submissions, say by you,

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1 for example, wouldn't require much more than  
2 that same skill; is that right?

3 A Probably depends on what I've  
4 submitted.

5 Q Okay. Well, I wanted to take  
6 a look for a moment at your original  
7 revised --

8 Original. It's kind of  
9 contradictory, isn't it?

10 -- your revised report and  
11 testimony, CPSD Exhibit 2. What I'd like you  
12 to do is to turn to the attachment which is  
13 your resume.

14 A Okay.

15 Q Okay. You see that?

16 A Yes.

17 Q And I'm going to focus you for  
18 a moment on the last page of that.

19 A The last page.

20 Q The last page of your resume.

21 You've got at the top career and history and  
22 highlights previous experience.

23 A Yes.

24 Q And I want to look with you for  
25 a moment at the block of additional  
26 information.

27 A Okay.

28 Q It's got your Washington State Bar

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1 number. It's got your California general  
2 contractor license number.

3 A Yes.

4 Q Now there's -- is there anything  
5 you want to add about your contractor  
6 license?

7 A It's in the nonactive status at  
8 present.

9 Q Okay. So that -- so we should add

10 to this "nonactive" to make it accurate

11 a hundred percent?

12 A You can. It still comes up on

13 the site as that contract number with my name

14 and my company.

15 Q And inactive?

16 A It just says inactive because

17 I chose to make it inactive on the last

18 registration cycle.

19 Q Okay. That was in 2009 -- excuse

20 me, 2011, about 18 months ago?

21 A Yeah. It was the last time it came

22 around for registration.

23 Q So it's been inactive for the last

24 18 months?

25 A Yes.

26 Q So well, I'll write on mine just to

27 make it completely accurate, inactive.

28 Now, you also have on here

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1 reference to being an associate member of

2 the California Bar Association. And the

3 California Bar Association, that's the State

4 Bar of California; correct?

5 A Yes. This is an associate

6 membership.

7 MR. MALKIN: Well, I'd like to mark as

8 an exhibit, your Honor, as PG&E's next in

9 order a printout from the State Bar website

10 of the results of an attorney search for  
11 the name Felts.

12 ALJ YIP-KIKUGAWA: Okay.

13 THE WITNESS: I think my name would  
14 come up under a search on that bar. I don't  
15 think it ever passed.

16 ALJ YIP-KIKUGAWA: Thank you. This  
17 will be PGE-23.

18 (Exhibit No. PGE-23 was marked for identification.)  
19

20 MR. MALKIN: Q And you see there,  
21 Ms. Felts, on the results of the search, of  
22 the State Bar website for the name Felts, we  
23 have an Emily Felts, a Jennifer Felts, and  
24 a Robert Felts but no Margaret Felts;  
25 correct?

26 A Yes, but this is a search for  
27 lawyers who have been admitted to the bar in  
28 California.

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1 Q And you have not been admitted to  
2 the bar in California?

3 A No. But --

4 Q In fact --

5 A -- they did have a category for if  
6 I wanted to receive documentation from the  
7 California Bar for instance on environmental  
8 matters, I could pay a nominal fee and be  
9 what they at one point called associate

10 member and receive those documents.

11 Q And in fact, Ms. Felts --

12 A They still mailed me the documents.

13 So I'm assuming I'm still good there.

14 Q And in fact, Ms. Felts, there's no  
15 such thing as an associate member of the bar.

16 What you are is an associate member of  
17 the environmental law section.

18 A Okay.

19 Q Is that right?

20 A Maybe -- maybe so.

21 Q And that's something -- an  
22 associate member of a section of the bar is  
23 open to anybody with an interest in  
24 the subject matter. Could be a law student,  
25 could be an engineer, could be --

26 A That's correct.

27 Q -- a newspaper reporter?

28 A Yes.

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1 Q So in fact, you were not an  
2 associate member of the California Bar, you  
3 are merely somebody who participates in  
4 the education offered by the Environmental  
5 Law Section; is that right?

6 A Okay. I'll agree with that.

7 Q So, should we correct that on your  
8 resume here, too?

9 A Sure.

10 Q So those inaccuracies in your view,  
11 those -- are they Rule 1 violations or not  
12 Rule 1 violations?

13 MR. CAGEN: Oh, your Honor, no one has  
14 the right to call these inaccuracies at this  
15 point. And this was perfectly accurate  
16 information the way it was given and  
17 described.

18 ALJ YIP-KIKUGAWA: Okay. I'm  
19 sustaining that. Let's strike that question.

20 MR. MALKIN: Okay, I'll phrase it  
21 differently.

22 Q These -- describing these two  
23 things the way you did instead of the way we  
24 just went through would be more accurate. Do  
25 those rise to the level of Rule 1 violation  
26 in your view?

27 A I don't think so.

28 Q And that's because you didn't do it

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1 intentionally?

2 A The resume is probably dated, more  
3 accurately stated. But I think this is not  
4 something that anybody relied on. It's not  
5 the answer to a data response.

6 Q So you think when the Commission,  
7 when the ALJ, assigned commissioner,  
8 the parties read this to see your  
9 qualifications, they weren't mislead into



10 believing that you're some sort of the member  
11 of the state bar of California?

12 A I wouldn't expect so. I put that  
13 I was registered with the State Bar right on  
14 the top line of Washington and gave my  
15 number. If I were a member of the California  
16 Bar, I'd put it right under that line and put  
17 a California number.

18 Q Ah. And of course, anybody reading  
19 this would expect that?

20 A I don't know.

21 Q All right. So that -- I'm doing  
22 this to try to define the parameters because  
23 you made a serious charge against PG&E in  
24 alleging the Rule 1 violation based on your  
25 view of a state of mind. So let's go back to  
26 those data requests a bit.

27 Actually, before I do that, there's  
28 one other thing I wanted to ask you about.

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1 I'd like to have marked, your  
2 Honor, as the next in order CPSD response to  
3 PG&E Data Request 13, Question 1.

4 ALJ YIP-KIKUGAWA: All right. That  
5 will be marked as PGE-24.

6 (Exhibit No. PGE-24 was marked for  
7 identification.)

7

8 MR. MALKIN: Q Okay. You have PG&E

9 Exhibit 24 in front of you, Ms. Felts?

10 A I do.

11 Q Have you seen it before?

12 A Yes.

13 Q And that was a data request that we  
14 sent directed to your rebuttal testimony in  
15 this case; correct?

16 A You sent it on August 24. I think  
17 I received it the next day.

18 Q And did you prepare the response?

19 A Yes, I did.

20 Q And is that response truthful?

21 A Given that I received it so late in  
22 the game and it asked for literally  
23 everything that I'd ever looked at and relied  
24 on, it's a very general response because  
25 I would not have had time to prepare  
26 a detailed response to this question.

27 Q Okay. Is that a way of saying it's  
28 not truthful or that it is truthful?

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1 A No. I think what's on here is  
2 truthful.

3 Q And in your view, is it a complete  
4 answer to the question that was asked?

5 A It's a complete general answer.

6 Q Okay. Well, the question that you  
7 were asked was to provide all documents and  
8 materials that you relied upon in preparing

9 your rebuttal testimony other than the ones  
10 that are specifically referenced in  
11 the testimony; correct?  
12 A Yes.

### **Conclusion**

Is the CPSD's motion without the prerequisite "facts and law supporting the motion"; nor offers "settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding"; because the CPSD seeks to cover up that it intentionally threw its case in PG&E's favor by providing unqualified witnesses; or is it because CPSD seeks to abuse the Commission's Settlement processes; or is it so as to protect the CPUC and its Commissioners from lawful federal court discovery; or all the above?

Apparently the Commission is willing to risk the wrath of a federal court judge; the California state legislature; the Mayor of San Bruno; and the attorneys of the victims of PG&E's San Bruno pipeline explosion; in what San Bruno Mayor Jim Ruane called "maneuvering overshadows the fact that eight people lost their lives" so as to cover their asses from the public knowing what they are really up to.

For all the reason presented CARE respects that CPSD's Motion be denied.

Respectfully submitted,



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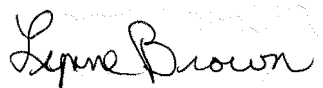
October 9, 2012

### Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9<sup>th</sup> day of October 2012, at San Francisco, California.

A handwritten signature in cursive script that reads "Lynne Brown".

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Mr. Lynne Brown Vice-President  
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