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10 WELLHEAD POWER MARGARITA, LLC, a Delaware
limited liability company

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
14 COMPLEX CIVIL LITIGATION CENTER

15 LADERAHOPE, a California nonprofit
corporation; DARRYL SERLIN, an individual;
16 SONIA SERLIN, an individual; MICHELE
LYNCH, an individual; SCOTT LYNCH, an
17 individual; BARRY LYON, an individual, and
STEPHANIE LYON, an individual,

18 Petitioners and Plaintiffs,

19 vs.

20 COUNTY OF ORANGE, a local government
entity; COUNTY OF ORANGE PLANNING
AND DEVELOPMENT SERVICES
21 DEPARTMENT, a local government entity; and
22 DOES 1 through 50, inclusive,

23 Respondents and Defendants.

24 WELLHEAD POWER MARGARITA, LLC, a
25 Delaware limited liability company; SAN
DIEGO GAS & ELECTRIC COMPANY, a
26 California corporation; and SEMPRA
ENERGY, a California corporation,

27 Real Parties in Interest.
28

**ELECTRONICALLY
FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

May 16 2008

ALAN SLATER, Clerk of the Court
by M. Chhay

Case No. 30-2008-00100906

Assigned For All Purposes To:
Hon. Ronald L. Bauer
Department: CX103

**SUPPLEMENTAL STATUS CONFERENCE
STATEMENT OF REAL PARTY IN
INTEREST WELLHEAD POWER
MARGARITA, LLC**

[CEQA ACTION]

Date: May 19, 2008
Time: 9:00 a.m.
Dept.: CX 103

Date Action Filed: January 2, 2008
Trial Date: None Set

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SUPPLEMENTAL STATUS CONFERENCE STATEMENT

Real Party in Interest Wellhead Power Margarita, LLC (“Wellhead”) provides this Supplemental Status Conference Statement pursuant to Rule VIII.2 of the Complex Civil Litigation Guidelines. While Rule VIII.2 does not expressly authorize the filing of a supplemental status conference statement, events in this matter have been unfolding on a daily basis and Wellhead desires to inform the Court of the latest developments in an effort to eliminate issues and avoid the needless expenditure of judicial resources and taxpayer and party funds.

A. Wellhead Has Requested That the County Rescind the Challenged Project Approvals

The most significant development in this case is the fact that on May 15, 2008, counsel for Wellhead contacted the County of Orange (“County”) and informed the County that Wellhead was requesting that the County rescind the County’s approvals of Wellhead’s site development permit and variance (“Project Approvals”) initially approved by the County Planning Commission in November 2007. As these are the very approvals challenged in this action, Wellhead’s withdrawal of its Project application effectively ends the current controversy regarding the Project and renders this action moot. Wellhead has been advised that County Counsel has informed the County Planning and Development Services Department (“Planning Department”) and members of the Board of Supervisors of Wellhead’s action, and that the Planning Department will rescind the Project Approvals upon receipt of a written request to do so from Wellhead. Wellhead will submit such a request in the next several days. It is Wellhead’s understanding that the County agrees that rescission of the Project Approvals will render the case moot.¹

B. Wellhead’s Response to the County’s May 13, 2008 Status Conference Statement

Although the withdrawal of Wellhead’s application for the Project moots the case, rendering the merits of the action irrelevant, Wellhead believes it is important as far as its

¹ As part of its request that the County rescind the Project Approvals, Wellhead has requested that all parties bear their own attorneys’ fees and costs in this matter. The County has stated to Wellhead that it believes that Wellhead’s request in this regard is reasonable and has requested LaderaHope *et al.* to consider agreeing to these terms.

1 credibility with the Court and the public is concerned to respond to the surprising turn of events in
2 the last few days. Wellhead has been in the energy business for 25 years and has obtained over
3 forty land use and air permits for power plant and other energy facilities from numerous local
4 agencies and air districts throughout the State of California during the company's lifetime. Not
5 once during the company's lifetime has Wellhead ever been accused of engaging in
6 misrepresentation by any party, much less by a governmental agency such as the County.
7 Accordingly, Wellhead feels compelled to respond to the assertions made in the County's May 13,
8 2008 Status Conference Statement.

9 As set forth in further detail below, Wellhead unequivocally denies the implications that it
10 has provided the County with "inaccurate" information and/or has misrepresented the proposed
11 Project in any way.

12 1. The Memorandum of Understanding Executed Between LaderaHope,
13 Wellhead, and SDG&E

14 The proposed peaker plant was approved by the County's Planning Commission in
15 November, 2007. Prior to the Planning Commission's noticed public hearing on the Project, six
16 Ladera Ranch residents, who were represented by counsel, submitted an extensive letter to the
17 County objecting to the negative declaration ("Negative Declaration") that was ultimately adopted
18 by the County as the environmental clearance document for the Project Approvals.

19 Notwithstanding that these Ladera Ranch residents were fully apprised of the County's
20 pending hearing, these Ladera Ranch residents did not attend the Planning Commission hearing,
21 and did not appeal that decision to the Board of Supervisors, as they had the opportunity to do
22 under applicable Orange County Code sections. In addition, at least several hundred other Ladera
23 Ranch residents were informed of the Project by way of email communications, press coverage,
24 various notifications, and other means and none of the other individuals appeared at the Planning
25 Commission meeting as well.

26 Shortly after the lawsuit was filed in January 2008, Wellhead, San Diego Gas & Electric,
27 and Sempra Energy (the latter two entities shall be referred to, collectively, as "SDG&E") were
28 contacted by the County, which requested that Wellhead and SDG&E engage in serious settlement

1 discussions with Petitioners in an effort to resolve the matter outside of the litigation context. It
2 was suggested that the proposed peaker facility had become a political “hot potato,” and that it
3 was the County’s preference that the matter be resolved through settlement negotiations.

4 Accordingly, Wellhead and SDG&E immediately commenced settlement negotiations with
5 Petitioners. The early stages of the settlement negotiations resulted in the execution of a
6 Memorandum of Understanding (“MOU”). This MOU was requested by Petitioners and
7 established a framework whereby Wellhead would provide a significant monetary payment to
8 LaderaHope (initially \$75,000) for the purposes of allowing LaderaHope to hire independent third
9 party consultants to “peer review” the Negative Declaration approved by the County.

10 In addition to providing LaderaHope \$75,000 to hire technical consultants, under the terms
11 of the MOU Wellhead and SDG&E: (i) made executive personnel available to LaderaHope on a
12 twenty-four hour, seven-days-a-week basis; (ii) provided LaderaHope with virtually any and all
13 non-privileged materials requested by LaderaHope; (iii) provided LaderaHope access to technical
14 consultants; and (iv) even authorized LaderaHope to speak with energy regulatory attorneys
15 utilized by Real Parties in an effort to explain the California energy system to Petitioners. The
16 MOU also provided that should a settlement agreement not be reached by a specified date,
17 Wellhead would provide an additional \$50,000 to LaderaHope. Wellhead made this payment to
18 LaderaHope in late April. Thus, Wellhead has paid a total of \$125,000.00 to LaderaHope during
19 the course of the alleged settlement process.

20 As late as Wednesday, May 7, 2007, consistent with the previous communications made to
21 Wellhead, a representative of LaderaHope advised Wellhead executives that LaderaHope was still
22 very interested in settling the lawsuit. Later that same day, however, Wellhead’s attorneys
23 received a letter on behalf of LaderaHope informing them that LaderaHope was not interested in
24 pursuing any further settlement discussions. The very next day, LaderaHope delivered a 100-page
25 plus document to the County requesting that the County revoke the challenged approvals
26 (“Revocation Request”). Neither LaderaHope nor anyone at the County informed Wellhead or
27 SDG&E of the delivery of this package until nearly 5 p.m. Monday, May 12, 2008. Wellhead was
28 never provided with an opportunity to respond to or review the Revocation Request. The next

1 day, on May 13, 2008, the County filed its Status Conference Statement, in which the County
2 informs the Court that it is not going to be defending the Project Approvals it previously approved.

3 2. The County's Status Conference Statement

4 In its Status Conference Statement, the County accuses Wellhead of providing “inaccurate
5 information” with respect to the peaker facility. The County states that “Wellhead . . . emphasized
6 . . . that the expected level of operation of the plant would be about 200 hours per year. . . . The
7 new information suggests that the actual intention of Wellhead and SDG&E was to operate the
8 plant 2000 or more hours per year.” (County Status Conference Statement (“CSCS”), p. 2.)
9 These assertions are not only confusing, but they are simply wrong. The challenged Negative
10 Declaration, as well as numerous public presentations made by Wellhead to the County (including
11 elected officials) and to members of the public, stated clearly that the Public Utilities Commission
12 (“PUC”) *required* the plant to be available to operate 2000 or more hours per year. It was further
13 explained, however, that on average, based on Wellhead’s experience with the operation of other
14 peaker facilities comprising nearly twenty years of plant operations that the plant would likely
15 operate only about 200 hours per year.² Statements regarding the expected hours of operation
16 (around 200 per year) and potential hours of operation (2,460), appear no less than 25 times in
17 emails to County staff members; presentations made to County Planning Staff; the Site
18 Development Permit Application; presentations made to the Planning Commission; private
19 presentations to residents of Ladera Ranch; the Negative Declaration; the County’s draft Staff
20 Report; and the Wellhead verbal presentation made to the Planning Commission.

21 Further, the County’s assertion that the applicants “intend to double the size of the facility
22 over time” is equally confusing and untrue. (CSCS, p. 2.) The Margarita Substation, at which the
23 peaker facility was proposed to be located, is a large site that has been zoned by the County in a
24 manner that permits utility use since the early 1990s – long before the construction of Ladera
25 Ranch. The site is large enough to accommodate a variety of electrical facilities in addition to the

26 _____
27 ² Rather than operating at the discretion of Wellhead, as is suggested by LaderaHope (and now
28 the County), the plant would actually operate pursuant to the requirements of the California
Independent System Operator (“CAISO”) and the Public Utilities Commission pursuant to
extensive regulatory requirements. The plant would not be operated at the discretion of Wellhead.

1 proposed peaker facility and in early 2007 SDG&E in its RFO invited developers such as
2 Wellhead to develop a project for up to 100 MW at this site; some residual evidence of that
3 request exists in various documents and filings. However, the following is the factual history
4 regarding Wellhead's specific plans after becoming involved in this project: (1) Wellhead's bid to
5 SDG&E was for one 46-48 MW peaker plant; (2) the PUC has only approved the siting of one 46
6 MW peaker facility at the substation; (3) during the settlement negotiations, at the request of
7 Petitioners, Real Parties offered to commit to no expansion or addition of gas turbine or any other
8 non-renewable power generation at the substation. It is unfortunate that Real Parties' attempts to
9 settle the litigation with LaderaHope by offering to preclude any future expansion of the site is
10 now being used against Real Parties in an effort to make it appear that the Real Parties have a
11 current, concrete, or tangible plan to "double" the size of the facility.

12 County further asserts that new noise studies prepared in 2008 indicate that the overall
13 noise level of the plant at the nearest sensitive receptor may be "significantly higher" than
14 indicated in the noise study attached to the negative declaration. (CSCS, p. 2.) Again, this
15 assertion is simply wrong. Wellhead conducted a live, daytime, onsite noise demonstration at
16 Ladera Ranch on May 9, and 10, 2008, and invited all residents and members of LaderaHope, and
17 representatives of the County to attend the noise simulation. The results of the noise simulation
18 validated the daytime findings of the noise analyses that were included in the Negative
19 Declaration. LaderaHope effectively "boycotted" the noise demonstration and no one from the
20 County attended. Instead, LaderaHope provided the County with a noise study based on *a similar*
21 *but different power plant* (located in San Diego) involving *different design characteristics,*
22 *different, less stringent mitigation measures, and different topographical and geographical*
23 *features* than those that exist at the proposed peaker site.

24 The County also states that some of the air quality information "appears to have been
25 inaccurate." (CSCS, p. 3.) The South Coast Air Quality Management District, however, has
26 stated repeatedly (including at an extensive town hall meeting held in Ladera Ranch in March,
27 2008) that the air assessment conducted for the peaker facility complied with all of the Air
28 District's rules and regulations and did not pose a significant health risk.

1 While Wellhead has not had the opportunity to fully analyze the Revocation Request
2 produced by LaderaHope, the notion that somehow the materials provided in it constitute “new
3 information pursuant to Public Resources Code section 21166” is simply an attempt by the County
4 to re-open the process for LaderaHope. While the Revocation Request was produced after the fact
5 (and likely paid for by Wellhead under the pretenses of the alleged settlement process), none of
6 the information contained in it is information that was not known or could not have been known in
7 the exercise of reasonable diligence at the time the previous Negative Declaration was approved.

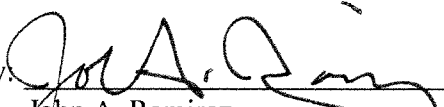
8 **C. Conclusion**

9 Although Wellhead has requested that the County rescind its Project Approvals, thereby
10 rendering this case moot, it is now on record that Wellhead vehemently disagrees with the
11 assertions set forth in the County’s Status Conference Statement that it somehow misled the
12 County and/or the public with respect to the peaker facility.

13
14 Dated: May 16, 2008

Respectfully Submitted,

RUTAN & TUCKER, LLP
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JOHN A. RAMIREZ

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17 By: 
18 John A. Ramirez
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WELLHEAD POWER MARGARITA, LLC

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PROOF OF SERVICE BY FACSIMILE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Fourteenth Floor, Costa Mesa, California 92626-1931.

On May 16, 2008, I served on the interested parties in said action the within:

SUPPLEMENTAL STATUS CONFERENCE STATEMENT OF REAL PARTY IN INTEREST WELLHEAD POWER MARGARITA, LLC

I caused the above document(s) to be transmitted by facsimile machine, telephone number 714-546-9035, pursuant to California Rules of Court, Rule 2005. The total number of fax pages (including the Proof of Service form and cover sheet) that were transmitted was 10. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine.

Executed on May 16, 2008, at Costa Mesa, California.

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

Bonny Todorof
(Type or print name)

Bonny Todorof
(Signature)

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