

## DOCKETED

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**motions**

ROB SIMPSON SUPPLEMENT TO MOTION FOR RECONSIDERATION OF COMMISSION'S MARCH 8, 2017 ORDER APPROVING PETITION TO AMEND DELTA ENERGY CENTER, MOTION TO COMPEL DISCOVERY, MOTION TO SANCTION CHIEF COUNSEL KOURTNEY VACCARO, MOTION TO COMPEL THE EXECUTIVE DIRECTOR TO CONDUCT INVESTIGATION, PETITION TO INTERVENE, MOTION TO STAY AMMENDMENT APPROVED ON MARCH 8 UNTIL SUPREME COURT, SUPERIOR COURT AND EPA/EAB RULE ON COMMISSION ACTIONS, AND TESTIMONY OF ROB SIMPSON

*Additional submitted attachment is included below.*

ROB SIMPSON SUPPLEMENT TO MOTION FOR RECONSIDERATION  
OF COMMISSION'S MARCH 8, 2017 ORDER APPROVING PETITION TO  
AMEND DELTA ENERGY CENTER, MOTION TO COMPEL DISCOVERY,  
MOTION TO SANCTION CHIEF COUNSEL KOURTNEY VACCARO,  
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INVESTIGATION, PETITION TO INTERVENE, MOTION TO STAY  
AMMENDMENT APPROVED ON MARCH 8 UNTIL SUPREME COURT,  
SUPERIOR COURT AND EPA/EAB RULE ON COMMISSION ACTIONS,  
AND TESTIMONY OF ROB SIMPSON.

**1720. Reconsideration of Decision or Order.**

(a) Within 30 days after a decision or order is final, the commission may on its own motion order, or any party may petition for, reconsideration thereof. A petition for reconsideration must specifically set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision. In addition to being served on all parties as required by section 1211, the petition for reconsideration shall be filed with the chief counsel of the commission.

(b) The commission shall hold a hearing for the presentation of arguments on a petition for reconsideration and shall act to grant or deny the petition within 30 days of its filing. In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied.

(c) If the commission grants a petition for reconsideration, or if on its own motion it orders reconsideration, then within 90 days, or within a longer period set by the commission for good cause stated, the commission shall hold a subsequent hearing, which may include the taking of evidence, and shall decide whether to change the decision or order. In the absence of an affirmative vote of three members of the commission to change the decision or order, it shall stand.

(d) The commission may stay the effective date of all or part of a decision or order pending reconsideration thereof. The commission shall specify the length of the stay, which shall expire no later than the end of the period for action upon reconsideration, as established in or pursuant to subdivision (c) of this section.

Note: Authority cited: Sections 25218(e) and 25541.5, Public Resources Code. Reference: Section 25530, Public Resources Code.

The Decision states;

The DEC will be configured as a compound-train combined cycle power plant, in which electricity is generated by three gas turbines, and additionally by a steam turbine that operates

on heat energy recuperated from the gas turbines' exhaust. By recovering this heat, which would otherwise be lost up the exhaust stacks, the efficiency of any combined cycle power plant is increased considerably from that of either gas turbines or steam turbines operating alone. Such a configuration is well suited to the large, steady loads met by a baseload plant, intended to supply energy efficiently for long periods of time.

*and*

The project is configured as a compound-train combined cycle power plant. Electricity will be generated by the three gas turbines and a shared steam turbine that uses heat energy recuperated from the gas turbines exhaust. (Ex. 20, p. 337.) By recovering this heat, which would otherwise be lost in the exhaust stacks, the efficiency of any combined cycle power plant is significantly increased in comparison to that of either gas turbines or steam turbines operating alone. (*ibid.*) The project objectives include generation of baseload or load following electricity. (Ex. 2, / 2.4.1.) Staff concluded that the proposed project configuration is well suited to meet project objectives. (Ex. 20, p. 337.)

*also*

The number of turbines further contributes to efficiency at part load. Gas turbine generators operate most efficiently at one particular output level, typically at full load. Whenever desired output is less than full load, the unit must be throttled back. Rather than being forced to throttle back one large turbine, with the consequent reduction in efficiency, the power plant operator will have the option of shutting off one or more gas turbines. This allows the plant to generate at less than full load while maintaining optimum efficiency, suitable for a plant meant for load-following duty. Loads down to 33 percent of full load allow one gas turbine, operating at full load, and the steam turbine to maintain peak efficiency. 338 DEC

The FSA states;

***ALTERNATIVES TO REDUCE WASTEFUL, INEFFICIENT AND UNNECESSARY ENERGY CONSUMPTION...***

The number of turbines further contributes to efficiency at part load. Gas turbine generators operate most efficiently at one particular output level, typically at full load. Whenever desired output is less than full load, the unit must be throttled back. Rather than being forced to throttle back one large turbine, with the consequent reduction in efficiency, the power plant operator will have the option of shutting off one or more gas turbines. This allows the plant to generate at less than full load while maintaining optimum efficiency, suitable for a plant meant for load-following duty. Loads down to 33 percent of full load allow one gas turbine, operating at full load, and the steam turbine to maintain peak efficiency. FSA

*and*

In conclusion, the project configuration (combined cycle cogeneration) and generating equipment ("F-class" gas turbines) chosen appear to represent the most efficient feasible combination to satisfy the project objectives. Wasteful, inefficient and unnecessary consumption of energy is not likely to occur.

The FDOC states;

Calpine Corporation and Bechtel Enterprises have submitted a permit application (# 19414) for a proposed nominal 880-MW combined cycle power plant, the Delta Energy Center

Each of these statements underpin the BACT determination for the facility. There is no BACT determination for operating the combined cycle facility in simple cycle mode with a useless HRSG attached that is merely diminishing performance. As described above, combined cycle operation is an inherently more efficient and therefore lower emitting technique or control device for simple cycle turbines as is contemplated in step one of a BACT determination. This BACT determination is the basis for the Federal PSD permit issued by the Bay Area Air Quality Management District (BAAQMD) The Commission effectively modified that permit when it amended the operating permit for the facility. The amendment was conducted in violation of federal law.

BAAQMD BACT rule states;

**2-2-202 Best Available Control Technology (BACT):** An emission limitation, control device, or control technique applied at a source that is the most stringent of:

202.1 The most effective emission control device or technique that has been successfully utilized for the type of equipment comprising such a source; or

202.2 The most stringent emission limitation achieved by an emission control device or technique for the type of equipment comprising such a source; or

202.3 The most effective control device or technique or most stringent emission limitation that the APCO has determined to be technologically feasible for a source, taking into consideration cost-effectiveness, any ancillary health and environmental impacts, and energy requirements; or

202.4 The most effective emission control limitation for the type of equipment comprising such a source that is contained in an approved implementation plan of any state, unless the applicant demonstrates to the satisfaction of the APCO that such limitation is not achievable. Under no circumstances shall BACT be less stringent than any emission control required by any applicable provision of federal, state or District laws, rules or regulations.

*And*

**2-2-301 Best Available Control Technology Requirement:** An authority to construct and/or permit to operate for a new or modified source shall require BACT to control emissions of District BACT pollutants under the following conditions:

301.1 New Source: An authority to construct and/or permit to operate for a new source shall require BACT to control emissions of a District BACT pollutant if the source will have the potential to emit that pollutant in an amount of 10.0 or more pounds on any day as defined in Regulation 2-1-217;

301.2 Modified Source: An authority to construct and/or permit to operate for a modified source shall require BACT to control emissions of each District BACT pollutant for which the source is "modified" as defined in Section 2-1-234 for which:

2.1 the source, after the modification, will have the potential to emit that pollutant in an amount of 10.0 or more pounds on any day as defined in Regulation 2-1-217; and

2.2 the modification will result in an increase in emissions of that pollutant above baseline levels calculated pursuant to Section 2-2-604.

THE PROJECT (AS AMENDED) DOES NOT MEET BACT AND REQUIRES A BACT DETERMINATION TO CONFORM TO THE CLEAN AIR ACT, AND DISTRICT RULES INCLUDING PSD RULES MUST BE CONDUCTED .

The FDOC states;

Pursuant to BAAQMD Regulation 2, Rule 3, Section 403, this document serves as the Final Determination of Compliance (FDOC) document for the Delta Energy Center. It will also serve as the evaluation report for the District Authority to Construct application #19414 and serves as the final PSD permit under delegated authority from the EPA.

The amendment modified the “PSD permit” without authority, adequate public notice under PSD rules and without a BACT analysis or analysis of other impacts from the changes. BAAQMD rules are clear that the amendment constitutes a PSD PROJECT

BAAQMD rule;

**2-2-224 PSD Project:** A new source as defined in Section 2-1-232, or a modified source as defined in Section 2-1-234, or a combination of such new or modified sources that are part of a single common project, that meets all of the following criteria:

224.1 Major PSD Facility: The source(s) are or will be located at a facility that has the potential to emit 100 tons or more per year of any PSD pollutant\* (including fugitive emissions) if it is in one of the 28 categories listed in Section 169(1) of the Clean Air Act, or 250 tons or more of any PSD Pollutant\* (not including fugitive emissions) if it is not in a listed category; and

224.2 Significant Increase in Emissions of PSD Pollutant: The new emissions from the new source(s) and/or the increase in emissions from the modified source(s) calculated according to Section 2-2-604 constitute significant emissions of any PSD pollutant as defined in Section 2-2-227.1; and

224.3 Significant Net Increase in Emissions of PSD Pollutant: The net emissions increase associated with the new or modified source(s), as defined in Section 2-2-220, constitute significant emissions of any PSD pollutant as defined in Section 2-2-227.1.

Any physical change or change in method of operation that takes place at a facility that does not meet the Major PSD Facility criteria specified in subsection 224.1, but which change would constitute a Major PSD Facility under the criteria in subsection 224.1 by itself, is a PSD Project.

*\*Note that GHG emissions are not included for purposes of applying the 100/250 ton-per-year major PSD facility threshold in Section 2-2-224.1. GHGs are not a Regulated NSR Pollutant under 40 C.F.R. § 52.21(b)(50), and therefore not a PSD Pollutant under Section 2-2-223, unless they are emitted from a facility that exceeds the 100/250 ton-per-year major PSD threshold for some other pollutant besides GHGs. Thus, for a facility to satisfy the major PSD facility test in Section 2-2-224.1, it must have emissions of some other Regulated NSR Pollutant besides GHGs that exceed the 100/250 ton-per-year threshold. For such facilities, GHG emissions are Regulated NSR Pollutants if there is an increase in emissions of 75,000 tons per year CO<sub>2</sub>e or more. See Section 2-2-223; see also 40 C.F.R. § 52.21(b)(50)(iv) and 40 C.F.R. § 52.21(b)(49)(iv).*

**2-2-217 Major Facility:** For purposes of the New Source Review requirements of Regulation 2, Rule 2, a major facility is a facility that has the potential to emit 100 tons per year or more of POC, NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, and/or CO. Fugitive emissions shall be included in calculating the facility's potential to emit under this Section if and only if the facility is in one of the 28 categories listed in Section 169(1) of the Clean Air Act. A physical change at a facility that does not otherwise qualify as a major facility is a new major facility if the change would constitute a major facility by itself

**52.21 Prevention of significant deterioration of air quality (b)1(i)(c)** Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of this section, as a major stationary source, if the changes would constitute a major stationary source by itself.

## THE CEC FAILED TO CALCULATE ANY POTENTIAL EMISSION CHANGES

**BAAQMD Regulation 2-2-604 requires an Emission Increase/Decrease Calculation Procedures for New Sources and Changes at Existing Sources:** The amount of any emissions increase (or decrease) associated with a new source, **or with a physical change, change in the method of operation, change in throughput or production, or other similar change at an existing source,** shall be calculated according to the following procedures:

604.1 New Source: The emissions increase associated with a new source is the source's potential to emit.

604.2 Change to Existing Source: The emissions increase (or decrease) associated with a physical change, change in the method of operation, change in throughput or production, or other similar change at an existing source (including a permanent shutdown of the source) shall be calculated as **the difference between: (i) the source's potential to emit after the change; and (ii) the source's adjusted baseline emissions before the change, calculated in accordance with Section 2-2-603.**

The Decision states;

Pittsburg's current General Plan was adopted in September 1988, and its goals and policies are applicable to the DEC project. (Ex. 2, / 8.4.4.2.4.) DEC complies with the Pittsburg General Plan Land Use element, Section 2.8 industrial development, which provides as follows:...Guiding Policy 2.8C: encourages new, clean, employment-intensive industry to locate in Pittsburg...Regarding Policy 2.8C, consistency is ensured because DEC will be a combined cycle/cogeneration plant, which will burn natural gas using state-of-the-art combustion technology. (Ex. 20, p. 120.)

THE PROJECT NO LONGER COMPLIES WITH LOCAL LAND USE LORS BECAUSE IT WILL NO LONGER OPERATE IN COMBINED CYCLE MODE

**25525.** The commission may not certify a facility contained in the application when it finds, pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. The commission may not make a finding in conflict with applicable federal law or regulation. The basis for these findings shall be reduced to writing and submitted as part of the record pursuant to Section 25523

BECAUSE THE PROJECT CAN NO LONGER OPERATE IN COMBINED CYCLE MODE IT CANNOT COMPLY WITH SOURCE TESTING REQUIREMENTS IN THE FDOC/PSD PERMIT

57. Within 60 days of start-up of the DEC and on an annual basis thereafter, the owner/operator shall conduct a District approved source test on exhaust point P-4 and P-5 while each Auxiliary Boiler (S-7 and S-8) is operating at maximum load to determine compliance with the emission limitations of Condition 37, parts (a) through (e), (g), & (h), while each Auxiliary Boiler (S-7 and S-8) is operating at minimum load to determine compliance with Condition 37, parts (c), (d), & (f), and to verify the accuracy of the continuous emission monitors required in condition 51. The owner/operator shall test for (as a minimum): water content, stack gas flow rate, oxygen concentration, precursor organic compound concentration and mass emissions, nitrogen oxide concentration and mass emissions (as NO<sub>2</sub>), carbon monoxide concentration and mass emissions, and particulate matter (PM<sub>10</sub>) emissions including condensable particulate matter. (BACT, offsets) FDOC

59. Within 60 days of start-up of the DEC and on an biennial basis (once every two years) thereafter, the owner/operator shall conduct a District-approved source test on exhaust point P-1, P-2, or P-3 while the Gas Turbine and associated Heat Recovery Steam Generator are operating at maximum allowable operating rates to demonstrate compliance with Condition 50. Unless the requirements of condition 59(b) have been met, the owner/operator shall determine the formaldehyde, benzene, and Specified PAH emission rates (in pounds/MM BTU). If any of the above pollutants are not detected (below the analytical detection limit), the emission concentration for that pollutant shall be deemed to be one half (50%) of the detection limit concentration. (TRMP) FDOC

THE COMMISSION HAS A STATUATORY AND DUE PROCESS DUTY TO CONSIDER PUBLIC COMMENTS. THERE IS NO EVIDENCE THAT OUR COMMENTS WERE CONSIDERED. THE COMMISSION SHOULD FOLLOW ESTABLISHED PROCEDURES FOR THE STAFF ASSESSMENT AND CONSIDERATION OF COMMENTS.

In a void of guidance on amendment procedures the commission must follow established procedures that were enacted to ensure that actions are completed in lawful and orderly fashion which includes the opportunity for informed public participation.



**1742. Staff Assessment** (c) Staff's preliminary environmental assessment shall be subject to at least a 30 day public comment period or such additional time as required by the presiding member. After close of the comment period staff shall publish a final staff assessment, which shall include responses to comments on significant environmental issues received during the comment period. The final staff assessment shall be filed according to a schedule set by the presiding member. If there is no applicable schedule; the final staff assessment shall be filed at least 14 days before the first evidentiary hearing on the subjects covered in the staff assessment.

**1727. Final Report and Proposed Decision Hearings.**

(a) The Commission or the assigned committee may hold one or more hearings to consider any statements of the parties on the final report and on the proposed decision, and the comments and recommendations of interested agencies and members of the public. Such statements may contain recommendations for amendments to the final report and proposed decision

**1744.5. Air Quality Requirements; Determination of Compliance**(d) Any amendment to the applicant's proposal related to compliance with air quality laws shall be transmitted to the APCD and ARB for consideration in the determination of compliance.

*Even a name change requires a greater comment period than was provided.*

**1769. Post Certification Amendments and Changes.**

(2) The commission may approve changes in ownership or operational control after fourteen days notice

The FDOC/PSD permit states;

29. No more than one of the Gas Turbines (S-1, S-3, and S-5) shall be in start-up mode at any one time. (PSD).

The Commission and CAISO should consider the operational limitations this places on the facility prior to any determination that the facility can serve grid reliability functions in the amended configuration.

The new configuration will require a commissioning period. The Commission must consider the impacts from the new commissioning period.

The Decision states;

c. Natural Gas

**The project will require large amounts of natural gas, which poses a risk of both fire and explosion.** (Ex. 20, p. 72.) The risk of fire and explosion will be reduced to insignificant levels through adherence to applicable codes and the

implementation of effective safety management practices. (*Ibid.*) The National Fire Protection Association (NFPA) Code 85A requires: 1) the use of double block and bleed valves for fast shut-off; 2) automated combustion controls; and 3) burner management systems. These measures will significantly reduce the likelihood of an explosion. Additionally, start-up procedures will require air purging of gas turbines and combustion equipment to prevent build-up of an explosive mixture. (*Ibid.*)...

## 2. Mitigation

The typical methods of mitigating accidental releases include the use of nonhazardous or less hazardous materials, use of engineered controls (design), use of administrative controls (safety plans), and emergency response planning (risk management). (Ex. 1, p. 20.) With the exception of using anhydrous ammonia instead of the less hazardous aqueous ammonia, Staff concluded that the project reflects all of these mitigation methods. (Ex. 20, pp. 73-74.)

## **COMMISSION DISCUSSION**

The evidence indicates that the worst-case scenario involving an accidental release of anhydrous ammonia is implausible. Although Staff suggests that aqueous ammonia could be substituted for anhydrous ammonia, the record does not support such a requirement.

*Now that part of the facility exploded, the record supports a requirement that the project employ "the less hazardous aqueous ammonia" The Commission should require the use of aqueous ammonia or urea.*

The Decision states;

5. To prevent fires and/or explosions from natural gas, the project will implement the safeguards established by the National Fire Protection Agency such as double block and bleed valves, automated combustion controls, and burner management systems, as well as air purging procedures prior to start-up.

The Commission decision failed to prevent fire and explosion and approved an amendment without consideration of the cause of the blast. It must consider the cause of the explosion prior to authorizing the remaining parts of the facility to be hobbled back together. The Commission's action is particularly egregious in that it was moments after the commission held a moment of silence for a worker that was killed when another commission decision failed to protect him.

The Business meeting opened;

CHAIRMAN WEISENMILLER: Okay. Actually, let's start out with a minute of silence. The Energy Commission wants to offer its condolences to the family and friends of Daniel Collins, the Riverside man who died at the Sentinel Energy Project in North Palm Springs. The Energy Commission approved an operating license for the project in 2010. We will obviously – we

offered our assistance to CalOSHA, the agency responsible for investigating the accident. The Commission has staff on site to review whether the plant was working within the parameters of its license. Now, let's have a moment of silence. (Whereupon, a moment of silence for Daniel Collins was held.)

*Daniel Collins died from an explosion*

In the very next item on the agenda the Commission approved an amendment at another plant that it had licensed in 2010 after it also had an explosion. The Commission had no report on the cause of the explosion and considered no opinion from CalOSHA.

This reckless disregard for worker safety cannot be mitigated by moments of silence. But silence is what the Commission offers. Silence in response to public comment regarding the explosion(s) at the facilities it licensed. Silence in response to informal and formal complaints. Silence in its duty to consider worker safety in its decision making.

In its zeal to approve reactivation of the damaged facility the Commission violated its own rules, the Federal PSD permit issued by the Bay area Air Pollution Control District and due process.

<http://www.desertsun.com/story/news/2017/03/06/palm-springs-power-plant-medical-emergency/98824382/>

At the Business meeting I complained that the petition was defective and those defects chilled public participation. I said;

There's a number of incidents there. But the petition itself, if I submit a petition that had no name, no contact information, you guys would throw it out. This petition has no identifying marks of who wrote it, who to contact or how to get more information.

Chairman Weisenmiller seemed to try to get staff to respond to my claim that the petition was defective because it did not have the basic elements that could pass a high school exam let alone a legal filing.

CHAIRMAN WEISENMILLER: Lisa would you also talk about -- discuss Mr. Simpson's just claims about the notice being inadequate in terms of the Calpine, the contact, et cetera? MS.

DeCARLO: Oh. Perhaps Calpine could speak to that. From my review of the notice it seems to me all the requirements, I'm not sure specifically what section Mr. Simpson is arguing that the petition does not comply with. CHAIRMAN WEISENMILLER: Okay. We'll get to that later, I'm sure. Staff, continue.

But no further discussion ensued on the topic and the petition remains deficient. It should be denied.

**No where in this proceeding has the Applicant, commission or staff even disclosed the address of the facility, The petition fails the most basic element of a "description of the**

**proposed modifications” and the notice fails the most basic element of a public notice, notifying the public of the location of the proposal. Commission regulations and due process provide ample guidance on the content of filings.**

**1211.7. Intervenor.**

(a) Subject to the provisions of specific proceedings, any person may file a petition to intervene. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, mailing address, e-mail address, and telephone number of the petitioner.

**1221. Petitions.**

(a) Any person may petition the commission to request rulemaking hearings. Such petition shall include:

(1) the name, address, and telephone number of the petitioner;

**1769. Post Certification Amendments and Changes.**

(a) Project Modifications

(1) After the final decision is effective under section 1720.4, the applicant shall file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements. The petition must contain the following information:

(A) A complete description of the proposed modifications, including new language for any conditions that will be affected;

The petition states; in Contra Costa County in the eastern industrialized portion of the City of Pittsburg

The Notice and staff analysis state; The power plant is located in the city of Pittsburg in eastern Contra Costa County.

The ORDER APPROVING PETITION TO AMEND alludes that the facility may be in California.

The petition should include a basic name address and phone number as would be expected in any serious matter under consideration from any government body and follow the rules of an application and include;

**Applications 1707. Authority and Verification.**

Every notice and application shall be dated and signed by each applicant attesting under penalty of perjury to its truth and accuracy.

Staff and applicant have not provided a “A complete description of the proposed modifications” a complete description would include responses to my data requests and the above information. Without the basic information that I requested the public can not have the advantage of informed participation. My data requests should receive a response.

**1714. Distribution of Copies to Public Agencies; Request for Comments.**

(a) As soon as possible after receipt of the notice or application for a site and related facility requiring a certificate of public convenience and necessity, the executive director shall transmit a copy thereof to the Public Utilities Commission and shall request the Public Utilities Commission to perform an analysis and to offer comments and recommendations regarding the economic, financial, rate, system reliability, and service implications of the design, construction, operation, and location of the site and related facilities. For applications for a site and related facility which does not require a certificate of public convenience and necessity, the executive director shall transmit a notice of receipt of the application to the Public Utilities Commission.

(b) Within ten days after receipt of the application for a site and related facility that is proposed to connect to the California Independent System Operator-controlled grid, the executive director shall transmit a copy thereof to the California Independent System Operator and shall request the California Independent System Operator to perform an analysis and to offer comments and recommendations regarding the system reliability implications and identification of interconnection facilities required for connection to the California Independent System Operator-controlled grid. For applications which do not connect to the California Independent System Operator-controlled grid, the executive director shall transmit a notice of receipt to the California Independent System Operator.

(c) The executive director shall also transmit a copy of the notice or application to the Coastal Commission for any site located in the coastal zone, to the Bay Conservation and Development Commission (BCDC) for any site located in the Suisun Marsh or the jurisdiction of the BCDC, to the California Department of Fish and Wildlife to the Air Pollution Control District in which the project is located, to the Regional Water Quality Control Board in which the project is located, to all federal, state, regional, and local agencies which have jurisdiction over the proposed site and related facility, or which would have such jurisdiction but for the commission's exclusive authority to certify sites and related facilities pursuant to Chapter 6 (commencing with section 25500) of Division 15 of the Public Resources Code, and to any other federal, state, regional, or local agency which has been identified as having a potential interest in the proposed site and related facility, and shall request analyses, comments, and recommendations thereon.

At the business meeting Ms. Vaccaro erred in urging the commission to bifurcate the basis for the amendment from the decision. The petition opens;

Delta Energy Center, LLC, as project owner, petitions the California Energy Commission ("CEC" or "Commission") to modify the certification of the Delta Energy Center ("DEC") to install temporary safety modifications to the steam turbine condenser, which will allow for operation of the facility during the period that repairs are being performed on the steam turbine

(this "Petition for Temporary Safety Modification" or "Petition"). On Sunday, January 29, 2017, at approximately 15:42 hours, the Facility experienced a mechanical event and resultant fire inside the steam turbine generator compartment that gave rise to the deployment of the fire department to the facility. As a result of the event, the steam turbine and steam turbine generator experienced significant damage. The cause of the event is currently being investigated, and a schedule for repairs is being generated.

MS. VACCARO: So this is Courtney Vaccaro, Chief Counsel. One thing I -- a point I think is important to underscore, the comments that were raised today indicate an interest in knowing what happened and figuring out whether or not there were any violations of the decision that governs this plant. As you heard from Ms. Root, that's something that staff is looking into. And if in fact Mr. Simpson submitted a request for investigation under our regulations it will be given due consideration. As I sit here, I'm not aware that any such document has been submitted to the Executive Director, as required by our regulations. But if it is, then it will be given due consideration. Very different set of issues than what's before you today, and I think it's very important to draw that distinction, because what you're doing today does not minimize or change the fact that we still need to understand what happened and we need to understand whether or not there might have been potential violations of the

Ms. Root then deemed the investigation as confidential with no regulatory basis for the contention.

MS. ROOT: This is Christine Root again, the Compliance Office Manager. I will state for the record that the Energy Commission Staff is conducting a formal investigation of the cause of the fire, but that is confidential right now until we reach a determination as to the cause.

This served to severe basis for the amendment from the decision and preclude public consideration of the matter. The commission should ensure that the investigation into the explosion and fire are public and transparent throughout the investigation with all evidence and deliberations posted on the docket for the project.

MS. ROOT: No. This is not a permanent amendment. You know, because the investigation is ongoing and we don't know the root cause, right now our best guess is possibly a year. But we will revisit this when the investigation's further along. And if this is becoming a permanent situation we will insist that an amendment be filed.

Ms. Root erred in deferring consideration of the basis for the amendment to another time. She cites no authority to "insist that an amendment is filed" and the order retains no jurisdiction to reopen the proceeding. This is the amendment in which these issues should be considered. If it is not a permanent amendment it should state that in the order.

I filed an informal complaint as contemplated in the decision. I received no substantive response. So. I filed a formal request for investigation. The response for which I have posted to the docket.

In an act of sheer audacity and disregard for the facts. Ms. Vaccaro did exactly as I said would be done at the business meeting; if I submit a petition that had no name, no contact

information, you guys would throw it out., The first cause of rejecting my formal complaint was that she claimed that it failed to provide

- your telephone number,

**With reference to;**

**§ 1231. Request for Investigation; Filing with the Commission.**

Any person may allege, in writing, a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. For a request to be acted on by the commission it must be submitted to the executive director, and include:

- (a) the name, address, email and telephone number of the person filing the request;

So apparently she had concluded that I had reached the name, address, and email, thresholds. Thresholds that no one held the applicant to, but I had failed on my duty to provide my phone number. This assertion is unhinged from the record. Page 2 of my complaint states;

Rob Simpson  
Executive Director  
Helping Hand Tools (2HT)  
510-634-4171

She also had my number before this action. Senior counsel for the California Energy Commission should be able to detect a telephone number plainly printed on a document. They should not be fabricating roadblocks to public participation and remaining silent while developers ignore the rules. The basic filing threshold requirements for a complaint from a member of the public should not exceed those of a developer seeking a formal project amendment. The developer should have to include a name, address and phone number in their petition or it must be rejected by the commission. The second basis for shelving my request was that it failed to contain;

- a statement of the facts upon which the request is based and any evidence and witness statements demonstrating the existence of those facts;

We made a host of verbal witness statements at the hearing demonstrating the undisputed facts that we stated in writing. Our written submission contains ample undisputed evidence. Instead of acknowledging what obviously consists of evidence, Ms Vaccaro identifies them as;

Your submission is a compilation of emails, newspaper articles, assertions, questions and argument related to the Delta Energy Center power plant, but it omits the above-listed information and statements. As a result, your request for investigation is incomplete and no action will be taken on your request until it is deemed complete.

- a statement indicating the statute, regulation, order, program, or decision that has been violated; and

It was clear To Ms. Vaccaro at the business meeting that my statements indicated the “decision” which was the subject of my complaint.

MS. VACCARO: So this is Courtney Vaccaro, Chief Counsel. One thing I -- a point I think is important to underscore, the comments that were raised today indicate an interest in knowing what happened and figuring out whether or not there were any violations of the decision that governs this plant.

Our written and oral statements cite sections of the decision, how they are violated and how the amendment process violates 1769 et al

- a statement indicating if the person or entity requesting the investigation has attempted to resolve the issue with the person or entity alleged to have committed the violation. (Cal. Code. Regs., tit. 20, § 1231, subds. (a), (c), (d), (f).)

Page 1 of my complaint states;

The following contains an informal request, which has not received a substantive response, and so is hereby filed as a formal request under section 1230 et el. Also included are comments on the proposed addendum.

Rob Simpson  
Executive Director  
Helping Hand Tools (2HT)  
27126 Grandview Ave  
Hayward CA. 94542

My statements continued at the Business meeting in the presence of Ms. Vaccaro. I complained;

I filed an informal complaint. There was no substantive response. So I filed a formal complaint regarding the explosion and lack of information to the public.

These can only be construed as “attempts to resolve the issue”

Ms Vaccaro repeatedly assured the commission that my submission would receive due consideration. That has certainly not occurred. She Said;

And if in fact Mr. Simpson submitted a request for investigation under our regulations it will be given due consideration. As I sit here, I'm not aware that any such document has been submitted to the Executive Director, as required by our regulations. But if it is, then it will be given due consideration.



The commission should sanction Ms. Vaccaro for her actions to contravene public scrutiny using a patently false basis and misleading the commission. The commission should compel the executive director to conduct the investigation requested.

The Commission violated Due Process.

Article I, section 7(a) of the California Constitution states that “[a] person may not be deprived of life, liberty, or property without due process of law....” The Supreme Court of California has interpreted that section to “hold that application of the clauses must be determined in the context of the individual's due process liberty interest in freedom from *arbitrary adjudicative* procedures. Thus, when a person is deprived of a *statutorily conferred benefit*, due process analysis must start.” People v. Ramirez, (1979) 25 Cal.3d 260, 263–64(emphasis added). In this case, the statutorily conferred benefit is the right to comment and have the comments considered by the Commission. This benefit is created by the CEC’s own statutes and regulations. *See*, “The commission hearings shall provide a reasonable opportunity for the public and all parties to the [AFC] proceeding to comment upon the application and the commission staff assessment and shall provide the equivalent opportunity for comment as required pursuant to Division 13 (commencing with Section 21000).” Cal. Pub. Res. Code § 25521. *See also* Pub. Res. Code § 25543 (legislature intends for “public participation in the siting process”); Pub. Res. Code § 25540.5 (input and review by members of the public required); Cal. Code Regs. tit. 20, § 1742(c) (“Staff's preliminary environmental assessment shall be subject to at least a 30 day public comment period or such additional time as required by the presiding member.”); Cal. Code Regs. tit. 20, § 1770 (“If a licensee or any other person objects to the modification, he or she shall be entitled to a public hearing on the matter before the Commission.”); and through the California Environmental Quality Act, the CEQA-equivalent document must have “sufficient time to review and comment on the filing.” California Public Resources Code §21080.5(d)(2)(vi) and the environmental document must be available “for a reasonable time” for review and comment by other public agencies and the general public. California Public Resources Code §21080.5(d)(3)(ii)

Because, there is a statutorily conferred benefit, the next step in the due process analysis is the four part test (1) the individual’s private interest, (2) the risk of error in the given procedure and the value of a substituted procedure, (3) the dignify interest in providing notice and a hearing, and (4) the governments interest in fiscal and administrative burdens. *See*, - Salisbury v. State Bar of Calif., (1985) 39 Cal 3d. 547, 565. First, the private interest is the right to be heard and to be addressed in an important regulatory decision that affects the health and safety of millions of Americans. Public comments are an essential part of the environmental review and without them the individual as well as the State suffer. Second, the risk of error in the given procedure is quite substantial. Without addressing public comments, the Energy Commission is bypassing an essential tool for adequately addressing environmental impacts. Additionally, the procedure, if applied correctly, would be sufficient to satisfy due process, but,

in this case, it was not. The third factor is the dignity factor or the chance for a party to adequately tell their story. In this case, petitioner did not get that chance. Not only was the comment period shortened and rushed, it was also never responded to. There is no dignity in being brushed aside. The last factor is the state's interest. The state does have an interest in keeping costs down and not overburdening themselves, but in this case applying the proper procedure would not be much of a burden. The Energy Commission routinely deals with permits and modifications that take years to complete – yet in this case the entire process was done in weeks and the comment period was 12 days opposed to months and months. Therefore, it is an indefensible position to argue that the state would somehow be burdened by an appropriate comment period and some response to comments.

All words in these motions should be construed as allegations that the commission erred in matters of fact and law. Also that it proceeded in excess of its authority and that it should correct its mistakes. Our prior filings and comments at the business meeting are hereby incorporated in their entirety. Arguments could not have been made earlier because Commission did not proceed under a formal amendment process that should have afforded more time. All arguments all relate to errors of fact and law. We reserve the right to amend based upon responses to discovery requests served to the executive director and docketed in our comments. The Supreme Court filing, superior court filing and EPA EAB appeal are hereby incorporated into these motions in their entirety.

For the above reasons the Commission should allow my intervention in this matter.

I HEREBY SWEAR THAT THE FORGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

A handwritten signature in black ink, appearing to read "Rob Simpson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Rob Simpson

Executive Director

Helping Hand Tools

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