

## DOCKETED

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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
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**PETITIONS TO AMEND THE  
CARLSBAD ENERGY CENTER  
PROJECT**

**Docket No. 07-AFC-06C**

**COMMITTEE ORDER DENYING EXPANSION OF SCOPE  
OF ROB SIMPSON'S INTERVENTION**

Upon consideration of the October 6, 2014<sup>1</sup> (Motions) filed by Rob Simpson (Petitioner), and the party responses, arguments and comments made prior to and during our October 23, 2014 hearing on the Motions, the Committee designated to conduct proceedings in this matter adopts the following analysis and findings:

**Analysis**

The issue for decision by the Committee is the scope of Mr. Simpson's participation, which was limited to the topic areas of Air Quality, Greenhouse Gas Emissions, and Public Health by our previous order granting him intervenor status. Mr. Simpson requests the ability to intervene regarding all of the topic areas considered in the Committee's consideration of the amendment requests.

Intervention at Commission proceedings is governed by Title 20, California Code of Regulations, section 1207. The relevant standards are found in subdivisions (a) and (c) of that section:

(a) Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. 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, address, and telephone number of the petitioner.

(c) The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

Thus, a decision on a petition to intervene is a discretionary decision, and a petition may be denied, in full or in part, if the presiding member or Committee finds that intervention would not be reasonable or relevant.

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<sup>1</sup> "1712(b). Objection to Committee Prejudice of My Petition to Intervene," etc., TN 203166

Mr. Simpson's petition to intervene identified general concerns about environmental quality, "clean energy independence," and the beauty and significant natural resources of the city of Carlsbad. He also stated that he wants to assure that the project uses best available control technologies, site specific integration and provides full mitigation for all air quality and other identified impacts.

In partially approving the petition, we found that Mr. Simpson doesn't reside in the project vicinity or represent an organization whose members do, and accordingly limited his participation to those topics whose impacts extend beyond the project vicinity - air quality, public health, and greenhouse gases.

Mr. Simpson objects to the limits upon his participation as an intervenor. He claims that the Committee's ruling is arbitrary and capricious because the Committee did not limit his participation in the previous Carlsbad proceeding.<sup>2</sup> During the October 23, 2014 hearing, Mr. Simpson was asked several times to describe the value—expertise, knowledge of the project area or other matters relevant to our review of the amendments—he would bring to the proceeding as an intervenor. The few specifics he provided are related to the topic of air quality, for which he has been granted intervenor status.

We do not agree that our previous grant of unrestricted (by topic) intervenor status to Mr. Simpson in 2008<sup>3</sup> requires a similar grant today. Six years have passed. We find it necessary to place appropriate limits upon parties in order to provide for the orderly and timely processing of permit applications and amendments thereto.<sup>4</sup>

In exercising our discretion to determine what is reasonable and relevant intervention in a power plant siting or amendment matter we find the following factors informative:

- (1) whether the petitioner has demonstrated a bona fide interest in the project. Examples of such interests include residence or property interests in the area affected by the project, and participation in broad efforts to preserve or protect the resources potentially impacted by the project. The area affected by the project varies by impact. Air emissions, especially of greenhouse gases, affect a much wider area than locally perceived effects such as visual, noise, and traffic impacts.
- (2) whether the petitioner possesses information and expertise that will assist the Committee in preparing a proposed decision. Examples of such information and expertise include familiarity with the environment in the area affected by the project and specialized knowledge about the resources potentially affected by the project.

We recognize that the above factors are somewhat subjective. It is not possible to define purely objective criteria for a decision involving persons whose skills, knowledge, and interests vary in the context of proceedings that present unique issues and needs.

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<sup>2</sup> Docket 07-AFC-06, found under the Original Proceeding heading at <http://www.energy.ca.gov/sitingcases/carlsbad/index.html>

<sup>3</sup> Docket 07-AFC-06, TN 48272

<sup>4</sup> Nor do we agree with Mr. Simpson's assertion that, as an intervenor in the original permit proceeding, he is entitled to continued intervenor status in this subsequent amendment of the original permit. While related to the same project and site, the two are distinct proceedings. We do not assume that the original parties will retain their interest in post-permit matters; instead we ask that they re-apply when an opportunity presents. Only three of the original six intervenors have in fact reapplied. Mr. Simpson is one of those three.

It is also instructive to look at the balance of interests represented by the intervenors in a proceeding. In this case, two local organizations—Power of Vision and Terramar Association—participated as intervenors in the original proceeding and successfully petitioned to intervene in this amendment proceeding. Therefore, the committee finds that the community interests in issue areas such as visual resources, noise, traffic, and land use are already well represented in this proceeding.

We also note that the limitations upon Mr. Simpson’s participation as an intervenor do not prevent him from commenting on any topic as a member of the public. Further, if circumstances change, Mr. Simpson is free to petition to expand (or reduce) the scope of his intervention.

## Findings

1. On August 7, 2014, Mr. Simpson filed a Petition to Intervene<sup>5</sup> in the above-captioned proceeding.
2. On September 23, 2014 this Committee filed an order<sup>6</sup> partially granting Mr. Simpson’s petition, giving intervenor status but limited to the topic areas of Air Quality, Greenhouse Gas emissions, and Public Health.
3. On October 6, 2014, Mr. Simpson filed the Motions, a document containing six separately captioned requests.
4. Three of the requests are not properly before this Committee. The appeal of the Committee’s September 23, 2014 order is set to be addressed by the full Energy Commission on October 29, 2014, as is the request for a rulemaking proceeding to revise the Energy Commission’s compliance regulations. The motion for reconsideration of the Committee’s September 23, 2014 order is not permitted by the reconsideration regulation,<sup>7</sup> which applies to decisions of the Energy Commission, not those of subordinate committees such as this. In any event, it is effectively similar to the three requests described immediately below, under which we give further consideration to the scope of Mr. Simpson’s intervention.
5. Mr. Simpson’s three remaining requests<sup>8</sup> ask for the same relief in different ways—that the scope of his intervention be expanded from the three approved topics described above to include all of the topics considered in the Committee’s review of the amendment requests. We treat them as a single request.
6. No provision of law provides Mr. Simpson with a due process right to intervene.
7. Intervention is granted in the Committee’s discretion to the degree that it finds intervention reasonable and relevant.
8. The Presiding Member or Committee may impose conditions on all intervenors’ participation in the hearings in order to promote the orderly conduct of the proceeding.

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<sup>5</sup> TN 202888

<sup>6</sup> TN 203091

<sup>7</sup> Title 20, California Code of Regulations, section 1720

<sup>8</sup> 1712 (b). Objection to Committee Prejudice of My Petition To Intervene; Petition to Fully Intervene; and 1716.5 Petitioners Further Motion and a Specific Showing of a Compelling Interest in the Other Areas Considered in This Proceeding

9. Mr. Simpson has not demonstrated that the project would affect any personal interest he has or that he would bring information or expertise that would help the Presiding Member render a proposed decision beyond the already approved areas of air quality, public health, and greenhouse gases. The existing scope permits him to introduce relevant evidence and conduct cross-examination in topic areas whose impacts can extend beyond the project vicinity.
10. Therefore, for the reasons stated above, the three motions requesting expansion of the scope of Mr. Simpson's intervention are **DENIED**.

Dated: October 27, 2014, at Sacramento, California.

***Original Signed By:***

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KAREN DOUGLAS  
Commissioner and Presiding Member  
Carlsbad Amendment Committee

***Original Signed By:***

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ANDREW McALLISTER  
Commissioner and Associate Member  
Carlsbad Amendment Committee