

## DOCKETED

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<b>Project Title:</b>	Carlsbad Energy Center - Compliance
<b>TN #:</b>	203342
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STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

In the Matter of:	)	Docket No. 07-AFC-06C
	)	
Petition to Remove Obsolete Facilities	)	
to Support Construction of the Carlsbad	)	
Energy Center Project	)	
	)	
And Petition	)	
to Amend the Carlsbad Energy	)	
Center Project	)	
_____	)	

ROBERT SARVEY’S PETITION TO THE FULL COMMISSION TO RECONSIDER THE  
CARLSBAD COMMITTEE’S RULING LIMITING INTERVENTION

Pursuant to Section 1720 of the Rules of Practice<sup>1</sup> and Procedure Petitioner Robert Sarvey respectfully appeals to the full commission the October 31, 2014 order of the Assigned Committee for the Carlsbad Amendment (Docket Number 07-AFC-06C) limiting his intervention in the proceeding. On October 6, 2014 petitioner timely filed a petition to intervene. On October 31, 2014 the Committee for the Carlsbad Amendment granted my intervention but ruled that my participation should be limited to the topics of Air Quality, Greenhouse Gas Emissions, Public Health, and Alternatives.<sup>2</sup> Petitioner requests that the full

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<sup>1</sup> The Rules of Practice and Procedure do not provide guidance on filing appeals of Committee orders limiting intervention. The rules only provide guidance for appeals on intervention when the intervention has been denied. This is not the case here. Petitioner interprets the rules to requiring filing under Section 1720. Considering the ambiguity of the Rules of Practice and Procedure on an order of a Committee order limiting intervention suggests that the order may not be lawful due to the California Constitution and CEQA and certainly not anticipated in the course of regular business at the commission.

<sup>2</sup> The deadline for submitting data requests was October 29, 2014.

commission overturn the Committees order as the order is unlawful, arbitrary and capricious, and an abuse of discretion.

### The Committee Order is not Lawful

In the order the Committee stated that the limitation on my intervention does not restrict my right to make public comments separately from my role as an intervener.<sup>3</sup> The Committee does not properly have authority to regulate my public comment by a committee order or decision. My right to provide public comment is provided by Public Resources Code Section 25214, “All meetings and hearings of the commission shall be open to the public, and **opportunity to be heard with respect to the subject of the hearings shall be afforded to any person.**”<sup>4</sup>

The committee order is also an unlawful attempt to limit my cross examination of witnesses to the areas of air quality, public health, alternatives and greenhouse gas emissions. The order states that, “*The existing scope permits him to introduce relevant evidence and conduct cross-examination in topic areas whose impacts can extend beyond the project vicinity.*” The right to cross examine any witness is provided by Public Resources Code Section 25214 which prescribes, “**Upon request, an interested party may be granted reasonable opportunity to examine any witness testifying at the hearing.**”<sup>5</sup>

Further the assigned Committees order establishes new requirements for intervention which have never been articulated or applied in any proceeding I have participated in. The Committees order now sets a new standard for full intervention in a proceeding by requiring residency in the city where the power plant is located to participate fully in all aspects of the proceeding.

Secondly the Committees order establishes that a non-resident intervener must demonstrate in his intervention petition that he would bring information or expertise that would help the Presiding Member render a proposed decision beyond the above narrowly prescribed topic areas. This requires the intervener to demonstrate his knowledge, competency and qualifications, and his ability to hire experts in his intervention petition in any topic area he requests the permission to participate in. This requires the intervener to know the exact issues

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<sup>3</sup> Public Resources Code Section 25214

<sup>4</sup> Public Resources Code Section 25214

<sup>5</sup> Public Resources Code Section 25214

and extent of his participation before he has reviewed the PSA the FSA or the FDOC none of which have been issued in this proceeding. This is an impossible standard that provides the presiding member unlimited power to limit or preclude individuals they deem non-residents or unqualified experts or any intervener they simply have a personality conflict with.

These ad-hoc requirements for intervention prescribed in the Carlsbad Committees October 31 order are intervention requirements that I have never encountered since I first intervened in a power plant proceeding in 2001. New requirements for intervention are properly considered in an Order Instituting Rulemaking where the public gets the right to comment and the full commission rules on the new regulations. These new intervention requirements have been applied in an arbitrary and capricious manner as I have appeared before the Carlsbad presiding member when not a member of the city where the power plant was sited and I have demonstrated before this commissioner that I can make substantial contributions to commission decisions in areas other than air quality, public health, alternatives, and GHG emissions. The ruling is an abuse of discretion on the part of the presiding member and the committee.

The Carlsbad siting case is of State and Regional importance and impacts all ratepayers and Residents of the State of California.

The impacts of the amended Carlsbad project affect more than just the residents who reside in Carlsbad. The project affects all ratepayers in the State of California and in SDG&E's service territory. The operation of the existing Encina plant which utilizes once through cooling (OTC) is a concern of all Californians. OTC units affect the health and biological diversity of California's greatest resource the Pacific Ocean and the disposition of the Encina unit is of statewide and regional importance. The retirement of the Encina unit and the manner in which it is retired has land use implications for all community's that host OTC units. The presence of retired and active hulking OTC units has visual impacts that affect every Californian who visits the Pacific Coast. The demolition of the fuel tanks and the exiting Encina Plant will occur in an environmentally sensitive area the Aqua Hedionda Lagoon. The manner in which they are demolished is a concern of all California residents with energy infrastructure in their community particularly OTC units

The amended CECP has impacts to citizens throughout the State of California not just Carlsbad residents.

The cost to ensure the safety and reliability of the electrical power generation infrastructure in the State of California affects all residents in the State. This includes the cost of certifying power plants at the California Energy Commission. Every ratepayer in the State of California pays a tax on their energy bill called the Energy Commission Tax.<sup>6</sup> The tax is levied on California ratepayers to fund the operations of the California Energy Commission. Every ratepayer pays a charge based on their electric use during a billing period. A portion of the Energy Commission budget is devoted to certifying and verifying compliance of California's thermal power plants.

The siting costs of the original CECP have already impacted ratepayers but the siting of the amended CECP will have a greater impact. In 2007 the CECP filed an AFC for a 540 MW combined cycle project. The CEC spent five years processing the original CECP license. The current fee for filing an AFC is \$268,709 plus \$537 a MW. There is also an annual compliance fee of \$26,872 for all projects granted a license.<sup>7</sup> The cost to file a new AFC for the amended CECP would be approximately \$608,630. But since the Commission is allowing Carlsbad to amend the CEC license rather than file a new AFC as they should be required to do, the cost to review this amendment is just the annual compliance fee of \$26,872. Energy Commission Staff has stated in their Issues Identification Report that,

*“The Petition to Amend and PTR are complex project amendments that differ from the licensed project in many ways. The complexity of the proposed amendments raises questions and analytical issues that are commensurate with those typically associated with an application for certification (AFC) of a newly proposed power project.”<sup>8</sup>*

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<sup>6</sup> The California legislature established the Energy Commission tax in 1975. The State Board of Equalization administers the tax, pursuant to current Sections 40001 et seq., of the Revenue and Taxation Code of the State of California. The tax provides additional funding for the California Energy Commission. Utilities are required to collect the Energy Resources Surcharge Tax pursuant to Part 19 of Division 2 of the California Revenue and Taxation Code. The tax will be stated as a separate item on the billing statement. It is currently fixed at \$0.00029 per kilowatt-hour. This tax rate is subject to revision from time to time by the Energy Commission, subject to a statutory maximum. The tax does not apply to the federal government and certain other agencies as described in the above section of the Revenue and Taxation Code.

<sup>7</sup> <http://www.energy.ca.gov/sitingcases/>

<sup>8</sup> [http://docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN202887\\_20140806T153655\\_Carlsbad\\_Energy\\_Center\\_Project\\_Amendment\\_07AFC6C\\_%E2%80%93\\_Issues\\_Ident.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN202887_20140806T153655_Carlsbad_Energy_Center_Project_Amendment_07AFC6C_%E2%80%93_Issues_Ident.pdf) Page 7

Energy Commission Staff anticipates that this project will require the equivalent amount of work as a newly filed AFC. Now after absorbing the cost overruns on the original AFC every ratepayer in the State of California is asked to subsidize Energy Commission review of the proposed CECP amendment. This affects all ratepayers not just ratepayers in the City of Carlsbad.

SDG&E has a PPTA pending approval before the CPUC in A. 14-07-009 for the output of the amended Carlsbad Energy Center.<sup>9</sup> According to San Diego Gas and Electric Rule 3.2 Noticing Requirements filing in the CPUC preceding this 20 year power purchase agreement will cost 2.6 billion dollars or 130 million dollars a year over the life of the PPTA.<sup>10</sup> The projects power purchase agreement represents a 3.29% increase in electric rates for SDG&E residential ratepayers each month. The cost of this power plant at 2.6 billion dollars impacts everyone in SDG&E's service territory not just residents of Carlsbad. The upward pressure on electricity rates caused by approval of the PPTA will affect all California ratepayers. The unrecoverable cost of the power plant will be allocated to ratepayers outside of SDG&E's service territory as well through the Cost Allocation Method. (CAM)

The California Coast is a treasure that belongs to all residents of the State of California. Abandoned Power Plants like the Morrow Bay Power Plant Power and active plants like the Encina project are eyesores that litter and pollute the coast of California as developers are not required to set aside money to tear down obsolete infrastructure. The amended CECP does not comply with the 35 foot height restriction of the Aqua Heidiona land use plan which was designed to protect the valuable California coastline view in Carlsbad. These are land use issues which affect not only Carlsbad residents but all coastal residents who live or vacation on California's beautiful coast line in the shadows of this unattractive power infrastructure. The impacts of abandoned energy plants are felt by residents throughout the State. In the Mariposa proceeding before Commissioner Douglas I intervened and advocated that an abandoned energy plant on the site of the Mariposa project be removed by the developer.

In many power plant proceedings standards are established which affect the siting of all power plants throughout the State. Conditions of certification implemented in one proceeding

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<sup>9</sup> <http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:57:1580017026482::NO>

<sup>10</sup> **SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)  
PROOF OF COMPLIANCE WITH RULE 3.2 NOTICING REQUIREMENTS**

have effects on the safety and reliability of other plants operating in other communities. For example there is a condition of certification that does not allow natural gas blows during construction of newly sited power plants.<sup>11</sup> The condition was originally proposed by me as a non- resident intervener in the Oakley proceeding.

The order limiting my participation to Air Quality, Public Health, GHG emissions, and Alternatives is arbitrary and capricious as I have demonstrated before Commissioner Douglas that I can and will bring information or expertise that would help the Presiding Member render a proposed decision beyond the above four topic areas I am being allowed to participate in.

Commissioner Douglas was the presiding member of the Mariposa Project. I as a resident of San Joaquin County intervened in the project and the project was located in Alameda County. Ken Celli who was the hearing officer in the Mariposa proceeding stated at the Commission adoption hearing, *“Mr. Sarvey raised issues—and I have to say that Mr. Sarvey contributed—all of the interveners put a lot of effort into this case and we went a long time with long hours but Mr. Sarvey put in—went above and beyond by helping some of the less experienced interveners to which we were grateful and he contributed greatly to this process. Mr. Sarvey’s issues that he raised and put into evidence with regard to land use, air quality, hazardous materials, alternatives, worker safety and fire protection.”*<sup>1213</sup>

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<sup>11</sup> **Oakley Power Project HAZ-9** The project owner shall not allow any fuel gas pipe cleaning activities on site, either before placing the pipe into service or at any time during the lifetime of the facility, that involve “flammable gas blows” where natural (or flammable) gas is used to blow out debris from piping and then vented to atmosphere. Instead, an inherently safer method involving a non-flammable gas (e.g. air, nitrogen, steam) or mechanical pigging shall be used. Exceptions to any of these provisions will be made only if no other satisfactory method is available, and then only with the approval of the CPM.

<sup>12</sup> Transcript CEC Business Meeting WEDNESDAY, MAY 18, 2011 Page [www.energy.ca.gov/business\\_meetings/2011\\_transcripts/2011-05-18\\_transcript.pdf](http://www.energy.ca.gov/business_meetings/2011_transcripts/2011-05-18_transcript.pdf) Page 113

<sup>13</sup> “Kerry Willis CEC Staff Attorney Several Conditions of Certification were changed for the better based on intervener suggestions.” Transcript CEC Business Meeting WEDNESDAY, MAY 18, 2011 Page 118 [www.energy.ca.gov/business\\_meetings/2011\\_transcripts/2011-05-18\\_transcript.pdf](http://www.energy.ca.gov/business_meetings/2011_transcripts/2011-05-18_transcript.pdf) Page 118

In the Mariposa Project where Commissioner Douglas was the presiding member I participated in and presented testimony in Worker Safety and Fire Protection,<sup>14</sup> Hazardous Materials,<sup>15</sup> Alternatives,<sup>16</sup> Socioeconomics,<sup>17</sup> and Land Use where I sponsored the expert testimony of Dick Schneider author of Measure D.<sup>18</sup> Measure D was a voter approved measure to preserve agricultural land in Eastern Alameda County.

In the Mariposa proceeding I brought Tracy Fire and Mariposa Energy to the bargaining table to discuss mitigation of impacts to the Tracy Fire Service and settle other outstanding disputes.<sup>19</sup> As stated by CEC staff attorney at the Mariposa Commission Adoption Hearing *“Mr. Sarvey brought a representative from Tracy Rural Fire to address any potential impacts to the fire safety services and the applicant and Tracy Rural worked out a condition of certification that included a payment of \$70,000 to the Tracy Rural Fire.”*<sup>20</sup> It is clear from the statements of Hearing Officer Celli at the adoption hearings I am capable and did provide valuable participation in the Mariposa Proceeding in multiple topic areas before Commissioner Douglas. As Mr. Celli said I even aided other interveners in the Mariposa Project helping them understand and participate in the CEC’s intimidating and complex process. Other interveners in the Mariposa Proceeding echoed Hearing Officer Celli’s comments that I assisted them in the CEC process. Mr. Lamb a member of the Board of Directors of the Mountain House Community Services District where the Mariposa Project was located stated at the Mariposa Commission adoption hearing *“Mr. Sarvey in particular because he was very helpful for us to help understand the process and help out with the other interveners.”*<sup>21</sup> Intervenor Rashe Dighe

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<sup>14</sup> [Robert Sarvey's Rebuttal Testimony- Worker Safety and Fire Protection- Exhibit 407.](#)

<sup>15</sup> [Robert Sarvey's Rebuttal Testimony- Hazardous Materials- Exhibit 4](#)

<sup>16</sup> [Robert Sarvey's Rebuttal Testimony- Alternatives- Exhibit](#)

<sup>17</sup> [Robert Sarvey's Opening Testimony Socioeconomics](#)

<sup>18</sup> [Dick Schneider's Opening Testimony Land Use Sponsored by Robert Sarvey](#)

<sup>20</sup> June 16 , 2011 CEC Business meeting Adoption Hearing Mariposa Transcript Page 160  
[www.energy.ca.gov/business\\_meetings/2011\\_transcripts/2011-06-15\\_transcript.pdf](http://www.energy.ca.gov/business_meetings/2011_transcripts/2011-06-15_transcript.pdf)

<sup>21</sup> Transcript CEC Business Meeting WEDNESDAY, MAY 18, 2011 Page 124  
[www.energy.ca.gov/business\\_meetings/2011\\_transcripts/2011-05-18\\_transcript.pdf](http://www.energy.ca.gov/business_meetings/2011_transcripts/2011-05-18_transcript.pdf)

stated, “*This is the first time that I’ve been an intervener so thanks. Thanks to the Senior Intervener specifically Robert Sarvey. He’s been guiding me throughout the process.*”<sup>22</sup>

## Oakley Project

At the Commission Business meeting where the Mariposa Project was approved the Oakley Power Project was also approved by the full commission. Commissioner Douglas was present at the hearing and voted to approve the Oakley Project and presumably read the proposed decision. The Oakley Project was proposed in Contra Costa County and I intervened as a resident of Tracy and no restrictions were placed on my intervention. In the Oakley proceeding I presented testimony on pipeline safety, worker safety and fire protection, socioeconomics, air quality, public health , greenhouse gases and biology.

In the hazardous material discipline I presented pipeline testimony that which was accepted into evidence. As stated in the Oakley final decision. ***“Consequently, during the March 25, 2011 continued hearing, the Committee accepted Haines, Lesh, and Sarvey as pipeline safety witnesses as qualified to present evidence and testimony”***.<sup>23</sup> The Oakley decision states, ***“Sarvey nonetheless demonstrated particular knowledge relating to CPUC proceedings and obtaining documents made available by the CPUC as they pertain to current PG&E pipeline safety issues.”***<sup>24</sup> ***“Sarvey supplemented this general discussion with specific information directly responsive to the question; namely that according to a publicly available filing from PG&E to the CPUC, line 400 was assessed in 2010 using External Corrosion Direct Assessment (ECDA).”***<sup>25</sup> As stated in the Oakley Project Commission decision, ***“As mentioned above and underscored by Sarvey’s testimony, we recognize that the CPUC is currently evaluating proposed new safety and reliability regulations in response to the recent, tragic PG&E gas line rupture and fire in San Bruno. Although regulation of pipelines in California is a matter for the CPUC and not within the Energy Commission’s licensing jurisdiction (Commission jurisdiction over related facilities such as fuel lines extends up to the***

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<sup>22</sup> Transcript CEC Business Meeting WEDNESDAY, MAY 18, 2011 Page 124

[www.energy.ca.gov/business\\_meetings/2011\\_transcripts/2011-05-18\\_transcript.pdf](http://www.energy.ca.gov/business_meetings/2011_transcripts/2011-05-18_transcript.pdf) Page 136

<sup>23</sup> [California Energy Commission Final Decision](#). Oakley Generating Station Posted May 23, 2011 Page 258 of 614

<sup>24</sup> [California Energy Commission Final Decision](#). Page 258 of 614

<sup>25</sup> [California Energy Commission Final Decision](#) Page 259 Of 614

*first point of interconnection (20 Cal. Code Regs. § 1702(n)), we impose Condition of Certification HAZ-10.”*<sup>26</sup>

In the Oakley Proceeding I also submitted testimony demonstrating the danger of flammable gas blows proposing that flammable gas blows not be permitted at the Oakley Power Plant. As the Oakley Decision states, ***“Intervener Sarvey offered Exhibit 404 relating to Worker Safety and Fire Protection but withdrew it after entering into a joint stipulation with the Applicant and Staff. Pursuant to the stipulation, the parties agreed that “the inclusion of Condition of Certification HAZ-9 contained in the FSA addresses Intervener Sarvey’s concerns relating to Worker Safety.” As discussed in the Hazardous Materials Management section of this Decision, we have adopted Staff-proposed Condition of Certification HAZ-9.”***

In the Oakley proceeding I presented extensive testimony in Air Quality, Public health, Socioeconomics and Environmental Justice. I executed a settlement agreement with the Oakley applicant which provided that the Oakley Project would not purchase ERC’s but instead would generate 2.5 million dollars’ worth of real time emission reductions in exchange for withdrawal of my air quality and public health testimony. As the applicants attorney stated at the PMPD conference, ***“Yes. I want to extend my thanks to the staff and Mr. Sarvey for having productive conversations. We entered into a stipulation in which we modified one condition, specifically AQS-C8 to address some concerns that Mr. Sarvey had raised. And that has now resolved the issues between Mr. Sarvey, staff and us with respect to Air Quality, Public Health, Socioeconomics and Environmental Justice.”***<sup>27</sup> The developer for the Oakley project Mr. Greg Lamberg stated at the adoption hearing, ***“I wanted to thank intervener Sarvey. I actually think that we have a better project due to his efforts and his input into this process so we certainly appreciate his participation.”***<sup>28</sup>

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<sup>26</sup> [California Energy Commission Final Decision](#). Oakley Hazardous materials Page 18

<sup>27</sup> **AQ-SC8** The project owner shall mitigate 63.88 tons per year (tpy) of PM10/PM2.5 and 12.55 tpy of SOx emissions. The project owner shall enter into an agreement with the Bay Area Clean Air Foundation for the project owner to contribute \$32,750 per tpy (which includes a Bay Area Clean Air Foundation administration fee of 20 percent) of project PM10/PM2.5 and SOx emissions to be mitigated. The funds contributed by the project owner shall fund emission reduction projects based on the proximity of the emissions reduction project to the project site and the relative health benefit to the local community surrounding the project site by including the following project-specific conditions:

<sup>28</sup> Transcript CEC Business Meeting WEDNESDAY, MAY 18, 2011

[www.energy.ca.gov/business\\_meetings/2011\\_transcripts/2011-05-18\\_transcript.pdf](http://www.energy.ca.gov/business_meetings/2011_transcripts/2011-05-18_transcript.pdf) Page

## Conclusion

From my experience at the Energy Commission which began in 2001 I believe that the Presiding Members decision to limit my participation establishes new requirements for intervenor and public participation. This precedential ruling eliminates the potential for me and other future intervenors to make meaningful contributions to energy commission decisions in areas where the presiding member deems we are not competent to do so or we are not geographically situated to do so. I have intervened in approximately 9 siting cases two in Tracy and the rest were located in other cities.<sup>29</sup> The intervention petition that I submitted in this proceeding was more detailed than the other nine proceedings I have intervened in. My intervention petition was as detailed as Interveners Power of Vision<sup>30</sup> or Terramar Associations<sup>31</sup> intervention requests and both those organizations were granted unlimited intervention rights. In the nine siting cases I have participated in I have never been once limited in my intervention. As I demonstrated above I have provided meaningful contributions to CEC proceedings before Commissioner Douglas in the areas of land use, biology, hazardous materials, and worker safety and fire protection all topics that this Committee order limits my ability to submit evidence in. I already have the ability to participate as a member of the public and the committees order makes an unlawful attempt to regulate my public participation rights that are guaranteed by Public Resources Code Section 25214. Public comment is not a substitute for full intervention as a Commission Decision cannot be based on public comment it must be based entirely on the evidentiary record. Without full participation rights I will not be able to submit exhibits and provide expert testimony in the topic areas that this order limits me in. The order limiting my participation is unprecedented in my 13 years of experience at the Energy Commission.

I recently submitted direct testimony and rebuttal testimony on October 15, 2014 and October 31, 2014 in CPUC proceeding A. 14-07-009 which is adjudicating the approval of the Carlsbad PPTA. My testimony addressed the environmental and economic impacts of the

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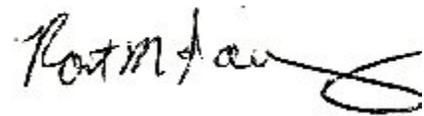
<sup>29</sup> Tracy Peaker 10-AFC-16, Ripon Simple Cycle 03-SPPE-1, Mariposa Peaker Project 09-AFC-3, Tracy Combined Cycle 08-AFC-7, Oakley Generating Station 09-AFC-4, Tesla Power Project 01-AFC-21, East Altamont Energy Center 01-AFC-4, San Francisco Electrical Reliability Project 04-AFC-1, Eastshore Energy Center 06-AFC-6

<sup>30</sup>[docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN202451\\_20140611T132014\\_Petition\\_to\\_Intervene.pdf](https://docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN202451_20140611T132014_Petition_to_Intervene.pdf)

<sup>31</sup> <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=07-AFC-06C>

amended CECP's PPTA and NRG's agreement with the City of Carlsbad. The CPUC proceeding has 16 parties including merchant generating associations, environmental groups, ratepayer advocates, DRA and the project proponent NRG. My testimony was accepted as expert testimony and not one of these groups contested its validity including NRG the proponent of this power plant. I will be paid for that testimony when I receive my intervener compensation award. Here I offer my expertise to the California Energy Commission for **FREE**. I cannot offer all areas of my expertise or hire experts where necessary to aid the commission's decision unless this Commission overturns the Carlsbad Committee's limitations on my petition for intervention. As I stated at the October 23 committee conference I will hire experts with my own money if circumstances call for it. Intervenor Power of Vision representative Dr. Roe welcomed my intervention as he stated his organization cannot afford to retain experts. I respectfully request that the full Commission overturn the Carlsbad Committee's order limiting my participation in the Carlsbad proceeding as it is unlawful, prejudicial and an abuse of discretion.

Respectfully Submitted,



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Robert Sarvey