

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	203929
Document Title:	Order Denying Simpson Request to Delay and Extending Testimony Filing Deadline
Description:	Air Quality and Rebuttal Testimony Deadline extended from March 24 to 3:00 pm on March 27, 2015
Filer:	Paul Kramer
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	3/20/2015 4:55:59 PM
Docketed Date:	3/20/2015



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

**PETITIONS TO AMEND THE
CARLSBAD ENERGY CENTER PROJECT**

Docket No. 07-AFC-06C

**COMMITTEE ORDER DENYING ROBERT SIMPSON'S MOTION TO
DELAY THE PROCEEDING AND ORDER EXTENDING THE DEADLINE
FOR FILING AIR QUALITY AND REBUTTAL TESTIMONY**

Upon consideration of the Motion to Delay All Activity in this Proceeding Until April 10, 2015 (Motion)¹ filed by Intervenor, Robert Simpson (Simpson or Petitioner), and the written and oral arguments of the parties and public, the Committee designated to conduct proceedings in this matter makes the following findings:

1. On February 17, 2015, Commission staff published its Final Staff Analysis (FSA) for the Carlsbad Energy Center Amendments.²
2. Notice of Hearings of Evidentiary Hearings, to be held in Carlsbad on April 1 and 2, 2015, was filed on February 23, 2015.³
3. During the March 3, 2015, Committee Status Conference, Dr. Steven Moore, representing the San Diego Air Pollution Control District, indicated that the District's Final Determination of Compliance (FDOC) would be filed no later than March 13, 2015. As that date would be after the deadline for the submission of opening testimony—March 10, 2015—the Hearing Officer modified the deadlines so that air quality testimony arising after review of the FDOC could be submitted by March 24, 2015, the previously established deadline for rebuttal testimony.⁴
4. On March 6, 2015, the Administrative Law Judge's proposed decision was released in the California Public Utilities Commission (CPUC) proceeding considering San Diego Gas & Electric's (SDG&E) request for approval of its power purchase tolling agreement (PPTA) with the project proponent. The proposed decision recommended that the request be denied without prejudice, pending the review of the results of other power procurement processes currently underway by SDG&E.⁵

¹ TN 203801, filed March 9, 2015

² TN 203696

³ TN 203728

⁴ TN 203775, filed March 5, 2015

⁵ TN 203789

5. The parties were notified that the Motion would be heard during the March 18, 2015, Prehearing Conference and were invited to file their responses to the Motion in their Prehearing Conference statements or by separate document.⁶ Intervenor Robert Sarvey filed a response supporting Simpson's Motion.⁷ Commission staff and the project proponent objected to the Motion.⁸
6. The FDOC was filed by Commission Staff on March 19, 2015.⁹
7. Simpson argues that unavailability of the FDOC requires delay in the proceedings. With the FDOC now available, we will extend the deadline for filing new air quality and all rebuttal evidence from March 24, 2015 to March 27, 2015. We find that there is reasonable time to review the FDOC and provide any additional necessary that is made necessary in order to respond to the FDOC and to prepare for the hearings. We note that the FDOC is not an entirely new document, but rather a refinement of the previously filed Preliminary Determination of Compliance.
8. A second ground for delay offered in the motion is that the effect on the project from the CPUC ALJ's proposed decision is uncertain. The earliest date that the full CPUC can act on the proposed decision is April 9, 2015. Simpson argues that we cannot give meaningful consideration to the amendment petitions without knowledge of that outcome.
9. Whether a proposed project has a contract to sell its generation is not generally relevant to our proceedings. In cases where it is necessary to override either unmitigable significant environmental impacts or conflicts with state or local laws, the need for a project may be a factor in the override calculus, with the existence of a contract as part of the evidence regarding need. It is but one factor, however, not necessarily dispositive. Projects do not need a contract in order to be approved by the Energy Commission.
10. Whether a project is ultimately built is decided by a combination of actors. The Energy Commission issues a permit which is focused on identifying and mitigating environmental impacts and compliance with federal, state, and local laws. If the developer wishes to sell its power to a regulated utility, the CPUC must approve the contract terms, focusing on the value and cost to the local ratepayers. At the Prehearing Conference, the project proponent pointed out that it could choose to build the project without a contract. To perform our part, we do not need to know precisely to whom the power will be sold.
11. We therefore do not find it necessary or appropriate to delay this proceeding to await a final decision in the CPUC matter. The original project's review occurred without a power purchase agreement and we see no reason why this amendment should not as well.

⁶ TN 203809, filed March 10, 2015

⁷ TNs 203886

⁸ TN 203858, 203873

⁹ TN 203924

THEREFORE, THE COMMITTEE ORDERS that the Motion is **DENIED**. The March 24, 2015, deadline for the filing of Air Quality and Rebuttal Testimony is extended to **3:00 p.m., on March 27, 2015**. Testimony on all topics will be heard during the Evidentiary Hearings on April 1 and 2, 2015.

Dated: March 20, 2015, at Sacramento, California.

Original signed by:

KAREN DOUGLAS
Commissioner and Presiding Member
Carlsbad Amendment Committee