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| Docket Number: | 07-AFC-06C |
| Project Title: | Carlsbad Energy Center - Compliance |
| TN #: | 203958 |
| Document Title: | Order Denying Sarvey Motion to Require Funding of Demolition |
| Description: | Includes an Invitation to Submit Evidence for the Evidentiary Hearings and Brief the Issue Following the Hearings |
| Filer: | Maggie Read |
| Organization: | Energy Commission Hearing Office |
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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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**PETITIONS TO AMEND THE
CARLSBAD ENERGY CENTER PROJECT**

Docket No. 07-AFC-06C

**COMMITTEE ORDER DENYING ROBERT SARVEY'S MOTION TO
REQUIRE THE APPLICANT TO SET ASIDE FUNDING FOR DEMOLITION
OF THE AMENDED CARLSBAD ENERGY CENTER WITHOUT
PREJUDICE TO CONSIDERATION OF THE ISSUE DURING THE
EVIDENTIARY HEARINGS**

Upon consideration of the Motion to Require the Applicant to Set Aside Funding For Demolition of the Amended Carlsbad Energy Center (Motion)¹ filed by Intervenor, Robert Sarvey (Sarvey or Petitioner), the Committee designated to conduct proceedings in this matter makes the following findings:

1. The Amendment Petitions currently before the Committee for decision were filed on April 29, 2014 and May 2, 2014.²
2. On October 31, 2014, Mr. Sarvey's Petition to Intervene in this proceeding was granted, limited to the topics of Air Quality, Greenhouse Gas Emissions, Public Health, and Alternatives.³
3. On December 15, 2015, Commission staff published its Preliminary Staff Assessment.⁴
4. On January 23, 2015, the parties to this proceeding were informed that the Committee would consider requests to expand or reduce the scope of intervenor participation during the February 4, 2015 Committee Status Conference.⁵ The parties were asked to file such requests as part of their status reports. No such requests were presented.⁶
5. On February 17, 2015, Commission staff published its Final Staff Assessment.⁷

¹ TN 203923, filed March 19, 2015

² TNs 202267 and 202287-1 through 202287-3, respectively

³ TN 203296

⁴ TN 203457

⁵ TN 203560

⁶ TN 203704, p. 10, Ins. 14 – 22.

⁷ TN 203696

6. On March 12, 2015, Petitioner filed his Direct Testimony of Robert Sarvey on Compliance and Closure⁸ (Closure Testimony). That document argues in favor of requiring that the project developer remove the project after it ceases to operate and further set aside funds sufficient to pay for that remediation.
7. During the March 18, 2015, Prehearing Conference, the Committee discussed the nature of Mr. Sarvey's Closure Testimony and stated its intention to treat it as public comment rather than testimony.
8. Later in the day on March 18, 2015, Mr. Sarvey filed the Motion, which repackaged the words and illustrations of the Closure Testimony into a formal motion, adding only introductory language and proposed language for a condition of certification COM-17.
9. Considering the issue of site remediation and financial assurances by way of a formal motion would allow Mr. Sarvey to circumvent the restrictions on his participation as an intervenor. Rather, the issue is best considered as part of our review of the evidence, public comment, and policy and legal arguments regarding whether the amendment petitions should be approved and, if approved, the appropriate conditions to attach to the amended project. Hearings for that purpose are scheduled on April 1 and 2, 2015, in Carlsbad.
10. Mr. Sarvey is not admitted as an intervener on a topic germane to the Motion. He did not ask to expand the scope of his participation. It is therefore appropriate to consider the Motion and earlier-filed Closure Testimony as public comment, not as a motion or as testimony.

To aid the Committee in responding to this and any similar comments, the Committee seeks the evidence and policy and legal advice of the parties who are admitted to speak as parties on the topic of project closure. This issue appears to be primarily a policy matter. While most of the evidence is likely already contained in the evidence proposed by the parties, we are adding time to the schedule to allow the parties to present any additional relevant evidence. We then invite the parties to make their legal and policy arguments in their post-hearing briefs.

⁸ TN 203859

THEREFORE, THE COMMITTEE ORDERS that the Motion is **DENIED WITHOUT PREJUDICE**. The issue raised in the Motion—requiring demolition of the project once it ceases to operate and financial assurances for such demolition—will be considered during this proceeding as though it had been raised by public comment. The project proponent, staff, Power of Vision, and Terramar will each have 10 minutes of time allocated under the topic of Compliance and Closure for the purpose of offering any testimony relevant to the issue. All parties are invited to address its legal and policy aspects in post-hearing briefs. The testimony shall be filed by the **March 27, 2015, 3:00 p.m.**, the deadline previously established for the submission of air quality and rebuttal testimony. The Committee will set the deadline for filing of post-hearing briefs at the conclusion of the evidentiary hearings on April 2, 2015.

Dated: March 24, 2015, at Sacramento, California.

Original signed by _____
KAREN DOUGLAS
Commissioner and Presiding Member
Carlsbad Amendment Committee