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Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	203994
Document Title:	Robert Simpson - Motion to Allow the Participation of Robert Sarvey and Robert Simpson in the Discussion about Mr. Sarvey's:
Description:	Motion to Require the Applicant to Set Aside Funding for Demolition of the Amended Carlsbad Energy Center at the Evidentiary Hearings
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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

ROBERT SIMPSON’S MOTION TO ALLOW THE PARTICIPATION OF ROBERT SARVEY AND ROBERT SIMPSON IN THE DISCUSSION ABOUT MR. SARVEY’S MOTION TO REQUIRE THE APPLICANT TO SET ASIDE FUNDING FOR DEMOLITION OF THE AMENDED CARLSBAD ENERGY CENTER AT THE EVIDENTIARY HEARINGS

Intervenor Robert Simpson hereby makes a motion to grant equal time to Mr. Simpson and Robert Sarvey allowing them both the opportunity to offer testimony or rebuttal testimony regarding Mr. Sarvey’s motion (TN# 203923) at the upcoming evidentiary hearings to the same extent granted to CEC staff, the applicant, Power of Vision, and Terramar in Committee Order TN# 203958.

In Committee Order TN# 203958, issued on March 24, 2015, the Committee denied Mr. Sarvey’s motion to require “demolition of the [CECP] project once it ceases to operate and financial assurances for such demolition” but allowed for its consideration “as though it had been raised by public comment.” The Committee then proceeded to grant ten minutes of time to staff, applicant, Power of Vision, and Terramar to offer “any testimony relevant to the issue[,]” however they did not provide similar time to the issue’s proponent, Mr. Sarvey, nor to Mr. Simpson who originally raised this issue three years ago in the original CECP proceeding (see page 2 of Rob Simpson’s Comments on the Carlsbad PMPD, TN# 65004, April 27, 2012, in 07-AFC-06). The exclusion of Mr. Sarvey and Mr. Simpson from this discussion not only detracts from the Commission’s efforts to have a comprehensive discussion of the issue, but does so by

narrowly defining the topic of discussion, running afoul of the CEC's Rules of Practice and Procedure, and violating the due process rights of Mr. Sarvey and Mr. Simpson.

In rejecting Mr. Sarvey's motion, the Committee interprets his request as exclusively falling under the category of "Compliance and Closure." This is a mistake. The Committee refuses to allow Mr. Sarvey to participate in its discussion of the issue at the evidentiary hearing because he "is not admitted as an intervener on a topic germane to the Motion." This presumes only the most literal and narrow interpretation of the issue. Site remediation and financial assurances can be considered to fall under Compliance and Closure for the purposes of categorization in the FSA; however the topic itself touches on a broader array of categories. As Mr. Sarvey notes in his motion, shuttered power plants "are [not only] a visual blight but they are also very dangerous facilities with many hazardous materials and dangerous conditions." He supports this statement with evidence about such conditions from the Mariposa, Consummes (Rancho Seco), and Morro Bay proceedings. The presence of "hazardous materials and dangerous conditions" on any site, including Carlsbad, poses a potential public health threat that is worthy of discussion in that context as well as "Compliance and Closure." In particular, parties should consider how to prevent such public health threats in the first place as well as how to go about removing them if they come into existence. Since both Mr. Sarvey and Mr. Simpson were granted permission to intervene on the topic of public health (see TN# 203296 and TN# 203282), the Committee should grant them the opportunity to address the issue along with the other parties at the evidentiary hearings.

Under the Commission's own Rules of Practice and Procedure, Mr. Sarvey has the burden of proof to support his proposed condition; yet the Committee has denied him the opportunity to speak about it or "present any additional relevant evidence" on a topic deemed "primarily a policy matter." According to §1748(e):

The proponent of any additional condition, modification, or other provision relating to the manner in which the proposed facility should be designed, sited, and operated in order to protect environmental quality and ensure public health and safety shall have the burden of making a reasonable showing to support the need for and feasibility of the condition, modification, or provision....

As the proponent of a condition that would assist in ensuring "public health and safety," Mr. Sarvey has the burden of proof. In its order, the Committee has granted other parties the

opportunity to make a “reasonable showing to support the need for and feasibility of the condition, modification, or provision,” but has not afforded that opportunity to Mr. Sarvey. And while it is true that Mr. Sarvey has presented some evidence on the subject already, the Committee made a point of *not* limiting evidence to that which is already “contained in the evidence proposed by the parties,” instead allowing the presentation of “*additional relevant evidence*” [emphasis added]. Since, as discussed above, Mr. Sarvey may comment on public health issues, has the burden of proof under the Commission’s own rules of practice, and the Committee has seen fit to allow the introduction of *additional* evidence on Mr. Sarvey’s own topic, Mr. Sarvey must be given the opportunity to fulfill his burden of proof at the evidentiary hearing.

Finally, all parties to this proceeding should be given an equal opportunity to address a topic under the basic dictates of due process. Mr. Sarvey, as the current proponent, should have the opportunity to make his case and present additional evidence in the discussion authorized by the Committee about the very condition he proposed. As the original proponent in the earlier CECP proceeding, Mr. Simpson deserves the same opportunity. Furthermore, considering that the Commission has frequently made statements about its desire to promote transparency and a comprehensive discussion in this (and other) proceedings, denying two active intervenors such as Mr. Sarvey and Mr. Simpson the opportunity to participate in a limited discussion even though it would add – at most – 20 minutes¹ to a proceeding that has essentially been ongoing since 2007, strikes a highly discordant note. Their participation would help fulfill obligations to fairness, due process, and transparency in addition to providing a more thorough examination of an important topic.

In conclusion, for the reasons discussed above, Mr. Simpson requests that the Commission grant him and Mr. Sarvey ten minutes each to discuss site remediation and financial services as described in Mr. Sarvey’s motion and the Committee’s order.

¹ The Committee granted 10 minutes time to each party for the discussion.

Respectfully Submitted,

/s/ Robert Simpson

March 30, 2015