

DOCKETED

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Project Title:	Carlsbad Energy Center - Compliance
TN #:	204185
Document Title:	Robert Simpson's - Motion to Require a Petition to Modify and Delay Issuance of a Proposed Decision
Description:	N/A
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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 (A) REQUIRE THE PROJECT OWNER TO
SUBMIT A PETITION TO MODIFY ITS APPLICATION FOR CERTIFICATION AND
(B) DELAY THE ISSUANCE OF A PROPOSED DECISION IN THIS PROCEEDING
UNTIL THE COMMISSION HAS FULLY EXAMINED THE PETITION TO MODIFY**

Intervenor Robert Simpson hereby makes a motion to (A) require the Project Owner to submit a petition to modify its application for certification of the Carlsbad Energy Center Project in light of the recent proposed and alternate decisions under consideration before the California Public Utilities Commission, and (B) delay the issuance of a proposed decision in this proceeding until the aforementioned petition to modify has received full consideration from this Commission.

Argument

On March 6, 2015, the California Public Utilities Commission issued a Proposed Decision by ALJ Yacknin Denying Without Prejudice San Diego Gas & Electric Company’s Application for Authority to Enter into Purchase Power Tolling Agreement with Carlsbad Energy Center, LLC (“CPUC Proposed Decision”) (entered as an exhibit here in TN# 203786). The CPUC Proposed Decision rejects allowing San Diego Gas & Electric Company (“SDG&E”) to enter into a Purchase Power Tolling Agreement (“PPTA”) with the CECP “in the event that [SDG&E’s] request for offers fails to produce more than the minimum required 200 megawatts of preferred resources and/or energy storage, or for approval of an amended [PPTA] agreement

with [CECP] for a smaller project in the event that the request for offers produces more than the minimum 200 megawatts of preferred resources and/or energy storage but less than the entirety of [SDG&E's] procurement authority.”¹ In other words, if SDG&E's request for offers produces more than 200 MW of feasible and cost-effective preferred resources and/or energy storage, then the number of megawatts approved for the CECP must be reduced accordingly.

On April 6, 2015, the CPUC issued an alternate proposed decision by Commissioner (President) Picker that conditionally approved a PPTA between SDG&E and the Project Owners (“Alternate Decision”) (previously filed here as TN# 204066). The Alternate Decision would “reduce the contract capacity from 600 MW to 500 MW” while requiring the 100 MW difference to be filled exclusively by preferred resources.²

This Alternate Decision is important for a number of reasons. First and foremost, the Alternate Decision tracks very closely with the “alternative approach” proposed by the Carlsbad Energy Center LLC in comments it submitted to the CPUC less than a month ago.³ As an alternative to the 632 MW project currently under consideration both at the CPUC and here, the Carlsbad Energy Center LLC proposed that

“[t]he [CPUC] could approve the Application and simultaneously require modification of the PPTA to apply to five generating units of the Carlsbad Energy Center as proposed to meet 500 MW of LCR need.... If the Commission were to approve this approach in a decision adopted not later than May 2015, Carlsbad Energy would agree to modify the PPTA to apply to the output of five units as proposed on the same price terms and according to the schedule set forth in the current PPTA.”⁴

This proposal by Carlsbad Energy Center is essentially the one put forth by Commissioner Picker in his Alternate Decision.⁵ Though the Project Owners went to great pains during the hearings to draw a distinction between “build less or construct less” and “procurement of a smaller number of megawatts,”⁶ the basic fact remains that the Alternate Decision would allow a contract for only 500 MW of their proposed 632 MW project – a 21% reduction in contract capacity.

¹ CPUC Proposed Decision (TN # 203786) at p. 2.

² CPUC Alternate Decision (TN # 204066) at p. 2.

³ *Opening Comments of Carlsbad Energy Center LLC on the Proposed Decision of Administrative Law Judge Yacknin*, March 20, 2015, at pp. 12-13. Available at:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M148/K825/148825268.PDF>.

⁴ *Id.*

⁵ CPUC Alternate Decision at p. 2.

⁶ Transcript of April 2, 2015 Evidentiary Hearings (TN # 204131), p. 160 lines 14-17 and p. 158 lines 12-21.

Moreover, unlike during the hearings when the discussion of the Project Owner's 500 MW alternative was merely about a comment letter,⁷ the now issued Alternate Decision has made that 500 MW alternative concrete. Given that the Project Owner did not discuss this significant change in depth in its testimony or during the hearings, the public, all parties, and the Commission deserve to have a discussion of it on the record now that it has become a real possibility for this project.

The lack of an Alternate Decision was discussed during the evidentiary hearings when several parties brought up the CPUC Proposed Decision and its potential impact on this proceeding. Members of the Commission and the Project Owner, by and large, dismissed that proposed decision as having little impact here. Indeed, Commissioner McAllister pointedly stated:

“I want to just caution all of us not to get involved (inaudible) on that point. That's a different agency. It's a proposed decision. It's by an ALJ, and so it actually doesn't change the facts that we are operating under now in the near term here. And if and when there's advances – there's advances or a final decision or alternative, whatever, ends up in that process, which is not this process, then maybe that does change the factual landscape, but we are not there right now.”⁸

Since Commissioner McAllister's statement at the evidentiary hearings, the facts have changed: just 4 days after the hearings, the Alternate Decision was issued by CPUC Commissioner (President) Picker for consideration. This alternative along with the aforementioned proposed decision, when taken in their totality, changes the landscape of this proceeding along the very same guidelines Commissioner McAllister outlined. While neither of these decisions has been finalized by the CPUC, in all likelihood one will become a final decision at the CPUC's next business meeting on May 7, 2015. Regardless of whether the CPUC chooses the Proposed Decision or the Alternate Decision, the end result will be a CECP with a substantially smaller capacity than the current 632 MW proposal presently before the Commission. The Commission should require the Project Owners to submit a petition to modify reflecting these changes and delay its own proposed decision until it fully considers said petition.

⁷ *Id.* at p. 158 line 12, “Mr. McKinsey: What's [sic] he's referring to are comments.”

⁸ *Id.* at p. 162 lines 20-25 and p. 163 lines 1-4.

This petition to modify should be submitted as per §1769 of the Commission’s Rules of Practice and Procedure. Doing so would allow for a complete description of any modifications to the project and an analysis of their impacts. More importantly, the Project Owner has admitted *in testimony at the CPUC* that modifying the PPTA from 600 MW to 500 MW would require modifying their petition to amend here at the California Energy Commission: Mr. Scott Valentino, Vice-President of Development for NRG Energy, Inc., testified that changing the CECP configuration from six LMS 100 units to five would make it “necessary to modify the Petition to Amend, thereby delaying the CEC process to afford time for CEC staff to analyze another change in project design.”⁹ Doing so would also “delay the construction start date” and would “likely...delay the commencement of commercial operation beyond the end of 2017....” Therefore, since the Project Owner not only proposed the reduced capacity put forth in the Alternate Decision, but is also fully aware of the additional steps it must take at the CEC to make the changes proposed therein and of the delays those additional steps would cause, the Commission should have no qualms in ordering the Project Owner to submit a petition to modify and delaying its proposed decision until the petition to modify receives a full review.

Conclusion

In conclusion, for the reasons discussed above, Mr. Simpson requests that the Commission (A) require the Project Owner to submit a petition to modify its application for certification of the Carlsbad Energy Center Project in light of the recent proposed and alternate decisions under consideration before the California Public Utilities Commission, and (B) delay the issuance of a proposed decision in this proceeding until the aforementioned petition to modify has received full consideration from this Commission.

Respectfully Submitted,

/s/ David Zizmor – Attorney for Robert Simpson

April 14, 2015

⁹ CPUC A.14-07-009, Prepared Rebuttal Testimony of Scott Valentino on Behalf of Carlsbad Energy Center LLC, October 29, 2014, at p. 2 lines 9-25 (attached hereto).