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STATE OF CALIFORNIA Energy Resources Conservation and Development Commission In the Matter of: Petitions to Amend

The CARLSBAD ENERGY CENTER PROJECT

DOCKET NO. 07-AFC-06C

ROB SIMPSON'S Point of Order and Motion to stay hearing until staff complies with Committee Orders.

I appreciate that the committee has scheduled to hear Mr Sarvey's motions. The; NOTICE OF HEARING ON ROBERT SARVEY MOTIONS AND COMMITTEE CONFERENCE (CLOSED SESSION) *states;*

Committee Orders

In preparation for the Hearing, Mr. Sarvey is ORDERED to file an offer of proof in which he describes with specificity the evidence he proposes to offer regarding decision D. 15- 05-05 and its relevance to matters raised by the taking of official notice of that decision. Commission Staff is ORDERED to file an analysis of the applicability of SB 83 to this proceeding and a report of its assessment of any fees that may be due as a result. Those documents shall be filed no later than 4:30 p.m. on Thursday, July 9, 2015. Other parties may address these issues in written filings as they desire."

I have read the responses from Mr. Sarvey, the developer and staff. Mr. Sarvey is the only on that seems to have replied as ordered. I will take this opportunity to state that while it is entirely appropriate for the committee to give staff orders, it is inappropriate for the committee to issue orders to Mr. Sarvey. Committee requests of Mr. Sarvey or other interveners should be phrased as requests and reflective of their commitment to volunteer their time for the betterment of the community, commission and environment.

Staff was ordered to file "a report of its assessment of any fees that may be due as a result" They did not do this. Without knowing how much would be due if the developer paid its fees instead of the people of California paying them I cannot gauge my level of interest. If they would only owe $50 a few cases of beer, and a carton of cigarettes I would probably not engage my attorney and myself to participate. If however they should be paying a million Dollars I would have a higher level of interest. The Committee should stay the proceeding until staff provides a report of what may be due as a result of this decision.

The Committee should also consider this information prior to making a decision. The Commission should consider the risk verses benefit of its action. Let's say for purposes of this example that the Committee assess a million Dollar fee. Maybe there is a 50/50 chance that the developer would then appeal the decision to the Supreme Court. The Commission may have $50,000 in legal expenses to defend the action. Historically, the Supreme Court has sided with the Commission 100% of the time. So, the commission would net $950,000 and set a precedent for all the amendment applications that it received the day before the new law came on the books. Maybe the Commission could avoid future furloughs by collecting fees for its services.

Instead of simply taking it opportunity to “address these issues” the developer chose attack Mr. Sarvey and to file a reply brief to Mr. Sarvey’s PMPD comments. If the Committee is allowing reply briefs to other issues I would also like the opportunity to file them. Mr. Sarvey was correct in his comments and the developers bit of subterfuge to file an incorrect reply brief should be struck from the record.

The main problem with staff and the developer’s briefs is the inherent contention that the committee did not already have the right to manage the proceeding and assess fees as it saw fit. It was not the original intent of congress that these type of developers should get a free ride every time they change their project. The new law is merely a clarification of congresses original intent. The Commission already had the right to assess these fees and no one has argued otherwise.

Regarding reopening of the record to consider the PUC decision. Staff stated; “Re-opening serves no useful purpose if it is merely to allow further elaboration of arguments already made by Sarvey or other intervenors.” The PUC decision is an important matter that was introduced late. The applicant claims Intervenor had ample opportunity to provide evidence, testimony and briefing on such impacts during the course of this proceeding. Because the decision had not occurred during that time period it could not have been considered.

The Developer further makes further assertions regarding the applicability of Section 1213 It stated; “However, that section only allows for reasonable opportunity to refute the officially noticed matter.” The PUC decision states; “in an effort to balance the reliability risks with the public interest in achieving our clean energy goals, we will condition approval of the Carlsbad PPTA on a reduction of the capacity from 600 MW to 500 MW…” To me, that means that if the Commission approves capacity over 500 MW it will interfere with “with the public interest in achieving our clean energy goals” or preclude the development of superior technologies. This is a significant impact that the committee has yet to recognize. So if the interpretation of that clause is that the Commission is overriding the PUC finding or in some way interpreting it that it is ok to license a bigger project while claiming that it serves the public interest then I refute the matter.

Thank you

Rob Simpson