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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**PETITIONS TO AMEND THE
CARLSBAD ENERGY CENTER PROJECT**

Docket No. 07-AFC-06C

**COMMITTEE ORDER DENYING ROBERT SARVEY'S
JULY 1, 2015 MOTIONS**

Upon consideration of the Motion to Allow Testimony and Briefing on D. 15-05-05 (Motion 1)¹ and the Motion to Require the Applicant to Pay the Amendment Fee Authorized by SB 83 (Motion 2)² filed by Intervenor, Robert Sarvey (Sarvey or Petitioner), the Committee assigned to conduct proceedings on the Carlsbad Energy Center Project Amendments (Committee) makes the following findings:

1. The petitions to amend the Carlsbad Energy Center Project were filed on April 29, 2014 and May 2, 2014.³
2. The Committee conducted evidentiary hearings on the amendment petitions on April 1 and April 2, 2015,⁴ issued its Presiding Member's Proposed Decision (PMPD) on June 9, 2015⁵ and an Errata to the PMPD on July 15, 2015.⁶

Motion 1

3. The California Public Utilities Commission (CPUC) has been reviewing an application from San Diego Gas & Electric Company to enter into a power purchase tolling agreement (PPTA) for 600 MW with the Carlsbad Energy Center Project (CECP).⁷
4. At the time of the evidentiary hearings in this proceeding, a CPUC Administrative Law Judge had issued a proposed decision to deny approval of the PPTA.⁸ The CPUC proposed decision was in evidence as Exhibit 4007.
5. During the evidentiary hearings, the parties, including Mr. Sarvey, argued about the effect, if any, of the Administrative Law Judge's proposed decision on the amendments to the CECP under consideration in this proceeding. The amendments under consideration in this proceeding would increase the capacity of the CECP from 530 MW to 632 MW. In its opening comments before the CPUC on the proposed

¹ TN 205208, filed July 1, 2015

² TN 205213, filed July 1, 2015

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

⁴ TNs 204130 and 204131

⁵ TN 204953

⁶ TN 205362

⁷ Application 14-07-009, filed July 21, 2014

⁸ TN 203789

decision, Carlsbad Energy Center LLC (petitioner) suggested as an alternative approach that the PPTA be approved for 500 MW.⁹ Mr. Sarvey submitted as evidence those opening comments and communications to the CPUC by various entities supporting a modified CPUC decision approving a 500 MW PPTA.¹⁰

6. Following the close of the evidentiary hearings in this proceeding, an alternative decision was proposed in the CPUC proceeding to approve a 500 MW PPTA.¹¹ This alternative decision was ultimately adopted by the CPUC on May 21, 2015.¹² The PMPD took official notice of its adoption by the CPUC.¹³
7. In his statements during the evidentiary hearings, his post-hearing brief,¹⁴ and his comments on the PMPD,¹⁵ Mr. Sarvey discussed the applicability of the CPUC's PPTA decision on this proceeding, asserting that the Energy Commission should only approve the quantity of electrical generation approved by the CPUC in the PPTA, not a potentially greater amount as the petitioner requests.
8. The PMPD considered the contentions of various parties, including Mr. Sarvey, that the Energy Commission should approve no more capacity than the CPUC approved for a PPTA. It concludes that the Energy Commission is not bound by CPUC decisions regarding utility purchase contracts and that, in light of other factors, it is appropriate to approve the full 632 MW of capacity requested by the amendment petitions.¹⁶
9. Motion 1 seeks to reopen the evidentiary record to accept additional evidence (Exhibits 6018—6025 and oral testimony) from Mr. Sarvey regarding the applicability of the CPUC decision to this amendment proceeding and to establish that the CPUC decision is not yet final because applications for rehearing are pending before the CPUC.
10. The additional evidence offered by Mr. Sarvey would be cumulative to the evidence and extensive argument already presented by the parties and considered in the PMPD. The existence or non-existence of a PPTA is but one factor in our decision; it is not necessary or appropriate to reopen the record to consider additional evidence on that point.

Motion 2

11. During the course of this proceeding, Mr. Sarvey and Intervenor Rob Simpson have requested, by motion, argument, or comment, that the petitioner reimburse the Energy Commission's for the expenses of processing the amendment petitions. The Committee denied those requests because no authority was found allowing the Energy Commission to impose such a requirement.¹⁷

⁹ TN 203986 (Ex. 6008)

¹⁰ Exhibits 6008, 6014-6017

¹¹ TN 204066, filed in this proceeding by Mr. Sarvey on April 6, 2015

¹² TN 204830 (Ex. 501)

¹³ TN 204953, p. 3-5

¹⁴ TN 204360, pp. 5-6, 16

¹⁵ TN 205174, pp. 8-9; TN 205308, p. 33

¹⁶ PMPD, TN 204953, pp. 3-6, 9-7 – 9-8

¹⁷ TNs 204969, 204970

12. The State Legislature and Governor recently amended the Warren-Alquist Act to provide the necessary authority. Public Resources Code §25806, as amended, requires the payment of a \$5,000 amendment application fee and reimbursement of the Energy Commission's actual expenses, capped at \$750,000.
13. In Motion 2, Mr. Sarvey seeks to have the Energy Commission give retroactive effect to §25806, charging the petitioner for expenses incurred by the Energy Commission beginning with the filing of the amendment petitions in 2014. He cites no legal authority for this retroactive action. The Committee does not find any reason to ignore the general rule of statutory construction that statutes are not given retroactive effect unless they explicitly so provide. The Commission can only seek reimbursement for expenses incurred after the statute change is effective, which Commission staff indicates it intends to do.¹⁸ That is the appropriate application of §25806.

THEREFORE, THE COMMITTEE ORDERS that Motions 1 and 2 are **DENIED**. Proffered Exhibits 6018—6025 are **REJECTED**.

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

Original signed by: _____
KAREN DOUGLAS
Commissioner and Presiding Member
Carlsbad Energy Center Amendments Committee

Original signed by: _____
ANDREW McALLISTER
Commissioner and Associate Member
Carlsbad Energy Center Amendments Committee

¹⁸ TN 205921, pp. 3 – 4. SB 83 (Chapter 24, Statutes of 2015) by its terms is effective immediately upon chaptering. The Governor signed and the statute was filed with the Secretary of State (chaptered) on June 24, 2015. We note this for staff's consideration as it begins to collect fees for amendments.