

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	205543
Document Title:	Transcript of the July 13, 2015 Amendments Committee Conference
Description:	N/A
Filer:	Cody Goldthrite
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	7/29/2015 11:08:11 AM
Docketed Date:	7/29/2015

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
 CARLSBAD ENERGY CENTER) Docket No. 07-AFC-06C
 POWER PROJECT AMENDMENTS)
 -----)

AMENDMENTS COMMITTEE CONFERENCE

CALIFORNIA ENERGY COMMISSION

CHARLES R. IMBRECHT ROOM

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, JULY 13, 2015

2:30 P.M.

Reported by:

Peter Petty

APPEARANCES

COMMITTEE:

Karen Douglas, Presiding Commissioner

HEARING OFFICER:

Paul Kramer, California Energy Commission

ADVISERS:

Le-Quyen Nguyen, Adviser to Commissioner Douglas

Jennifer Nelson, Adviser to Commissioner Douglas

Pat Saxton, Adviser to Commissioner McAllister

Eileen Allen, Commissioners' Technical Adviser
on Siting Matters

CEC STAFF:

Susan Cochran, Hearing Adviser

Dick Ratliff, Staff Counsel

Kerry Willis, Staff Counsel

John Hilliard, Project Manager

PETITIONER- CARLSBAD ENERGY CENTER, LLC

John McKinsey, Locke, Lorde, LLP

Jonathan Kendrick, Locke, Lorde, LLP

INTERVENERS:

Robert "Bob" Sarvey

PUBLIC SPEAKERS:

None Present

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1 SACRAMENTO, CALIFORNIA
2 MONDAY, JULY 13, 2015 2:30 P.M.

3 -o0o-

4 COMMISSIONER DOUGLAS: Good afternoon,
5 everyone. I think we're ready to go. This is the
6 PMPD conference for the Carlsbad Energy Center
7 amendments, and I'm Karen Douglas, I'm the presiding
8 member of the committee assigned by the Energy
9 Commission to oversee this case.

10 I'll introduce everyone on the dais. To my
11 left is the Hearing Officer, Paul Kramer, and to his
12 left is Pat Saxton, adviser to Commissioner
13 McAllister. To Pat Saxton's left is Eileen Allen,
14 she's the Commissioners' technical adviser on siting
15 matters. And to my right are my advisers, Jennifer
16 Nelson and Le-Quyen Nguyen.

17 So let me ask now for the parties to
18 introduce themselves, beginning with the applicant.

19 MR. MCKINSEY: Good afternoon. John McKinsey
20 with Locke, Lorde, counsel to the project owner and
21 applicant, Carlsbad Energy Center LLC.

22 Also with me is my associate John Kendrick.
23 And I believe George Piantka from NRG may be online.
24 I don't see his name, he might be call-in user two,
25 but we don't need to identify him now but he should be

1 online and available if we end up needing him.

2 COMMISSIONER DOUGLAS: Okay. George Piantka,
3 if you are online, speak up. All right, well, we may
4 get him later.

5 Staff?

6 MR. RATLIFF: Dick Ratliff, counsel for
7 staff, along with Kerry Willis, counsel for staff.
8 And I think online is John Hilliard, the project
9 manager for staff.

10 COMMISSIONER DOUGLAS: Great, thank you.

11 Okay. I'm going down the list of
12 interveners.

13 Tarramar Association, are you on the line?

14 Power of Vision?

15 Rob Simpson or David Zizmor?

16 Robert Sarvey?

17 MR. SARVEY: Yes, I'm here, Commissioner
18 Douglas.

19 COMMISSIONER DOUGLAS: Thank you.

20 Sierra Club?

21 All right. Is anyone here from the City of
22 Carlsbad, here or on the phone?

23 All right. Let's see, the Public Adviser's
24 Office is represented here, Shawn Pittard is in the
25 back of the room. Thank you, Shawn.

1 Anyone on the phone or in the room from any
2 other state, local, or federal government agency or
3 Native American tribe?

4 Okay. In that case, I will turn this over to
5 the hearing officer.

6 HEARING OFFICER KRAMER: Thank you. Let me
7 clarify one thing. Commissioner Douglas called this a
8 PMPD conference because I forgot to change the title
9 of our attendance sheet, but in fact, we are done
10 taking comments on the PMPD; I just want to make that
11 clear to everyone so nobody got excited.

12 But we do have a couple things to do today
13 and we'll try to get all the items out of the way
14 before we go into closed session so that people don't
15 have to stick around to wait to hear that we've come
16 out of closed session, although that may be necessary,
17 we'll see.

18 So the first items are hearings on pending
19 motions, and we have two, both from Mr. Sarvey. One
20 is his motion to allow testimony and briefing on D.15-
21 05-05, which is the CPUC decision on the NRG power
22 purchase tolling agreement. And then a second motion
23 of Mr. Sarvey's to require that the applicant pay the
24 amendment fee that was recently authorized by Senate
25 Bill 83.

1 We'll follow that with public comment, and
2 then go into a closed session.

3 So let's start with the motions, and we can
4 take them one at a time.

5 Mr. Sarvey, as the maker of the motion, do
6 you want to argue in favor of your first one regarding
7 testimony and briefing on the CPUC decision?

8 MR. SARVEY: Yes, thank you, Mr. Kramer.
9 I'll just take it exhibit by exhibit to explain my
10 purposes why I want to enter them and why I want to
11 provide some testimony on them.

12 Exhibit 6018 is the San Diego Gas and
13 Electric opening comments on the decision D.15-05-01.
14 In my view one of the requirements that must be
15 satisfied to certify this amendment is that there's
16 been a substantial change in circumstances since the
17 original approval, justifying a change.

18 And throughout this proceeding the applicant
19 has asserted that the electrical system is changing
20 and that somehow justifies the applicant's 333
21 megawatt peaking project as an amendment. And the
22 PMPD quotes the applicant to justify the change.

23 The applicant states that the purpose of the
24 proposed changes in this PPTA is to make the CEC
25 conform to current electrical energy needs for fast

1 response peaking generation and to better respond to
2 the unanticipated and unprecedented retirement of San
3 Onofre Nuclear Generating Station.

4 Throughout the proceeding the applicant never
5 explains how the electrical system is changing, never
6 explains how or why the admitted project better
7 responds to the retirement of San Onofre, so they
8 don't really carry their burden of proof in this
9 regard.

10 So the applicant merely points to the PPTA
11 that I'm proposing as Exhibit 6019 as evidence that
12 SDG&E has chosen this peaking facility in response to
13 current electrical needs and to better respond to loss
14 of San Onofre.

15 SDG&E hasn't been a participant in this
16 proceeding, and their position on what is needed for
17 the electrical system is not in evidence. Exhibit
18 6018 provides SDG&E's most recent position on the
19 current electrical needs for the system and needs
20 related to the retirement of San Onofre. SDG&E states
21 the Commission has important ongoing proceedings
22 dealing with rate reform, net energy meeting,
23 distribution resource plan, rulemaking. Additionally,
24 the Legislature is considering proposals to expand
25 direct access and increase renewable energy goals.

1 These regulatory and legislative initiatives
2 will influence utility and customer decision making
3 long into the future. A better understanding of the
4 outcome of the 2014 RFO as well as the direction of
5 related Commission proceedings and legislative
6 initiatives will better inform SDG&E and the
7 Commission on both the need for and the makeup of
8 future long-term supply side resources.

9 In light of these factors, SDG&E encourages
10 the Commission to consider the results of the 2014 RFO
11 and the direction of these relevant regulatory and
12 legislative initiatives prior to making a final
13 decision on the application.

14 Exhibit 6018 clearly demonstrates that SDG&E
15 believes that its RFO and the ongoing proceedings at
16 the CPUC will better inform them and the CPUC on what
17 is really needed for current electrical needs in the
18 retirement of San Onofre.

19 SDG&E is encouraging the CPUC to delay the
20 approval of the Carlsbad 500 megawatt PPTA until they
21 have concluded their 2014 RFO and relevant CPU
22 proceedings and reached their conclusion.

23 I would have introduced this in evidence but
24 it hasn't been available before April 1st and it was
25 not issued until the 27th of April.

1 HEARING OFFICER KRAMER: Okay. But this was
2 written before they then changed their mind, if you
3 will, and asked for approval of the 500 megawatt PPTA,
4 correct?

5 MR. SARVEY: I'm not aware that they ever
6 changed their mind, but this is what their thinking
7 was when they first commented on the proposed decision
8 of Michael Picker.

9 HEARING OFFICER KRAMER: Okay. Mr. McKinsey,
10 do you have anything to say to that question?

11 MR. MCKINSEY: I do, thank you.

12 I think the discussion around a lower
13 megawatt PPTA is not a new topic or concept. Indeed,
14 we had --

15 HEARING OFFICER KRAMER: I'll give you a
16 chance to make kind of general comments in a moment,
17 but the timing of this exhibit vis-à-vis what went on
18 in the PPTA proceeding relative -- you know, I'm
19 trying to understand where this fits in with the other
20 --

21 MR. MCKINSEY: This document is the
22 codification of the filing of the official decision by
23 the PUC to approve the 500 megawatt PPTA, and it
24 occurred in May, either May 15th or May 23rd, and so
25 it is indeed after the evidentiary hearings.

1 HEARING OFFICER KRAMER: Right, but these
2 comments Mr. Sarvey says were -- I don't have them
3 right in front of me, but were in late April, so they
4 were addressed to the PUC before they approved the
5 decision.

6 MR. MCKINSEY: Yes. I mean, after we closed
7 the evidentiary hearings the PUC was still conducting
8 its proceeding, and so there was an ongoing proceeding
9 that involved -- and that was kind of where I was
10 going. At the time of the evidentiary hearings and
11 even during the briefing we noted the fact that it was
12 raised at the time that there was this potential for a
13 different PPTA, and indeed the PUC ended up approving
14 that PPTA.

15 HEARING OFFICER KRAMER: was this SDG&E's
16 final word on what they wanted in regard to the PPTA?

17 MR. MCKINSEY: Yeah. SDG&E submitted a
18 request to have it be changed to be a 500 megawatt
19 PPTA.

20 HEARING OFFICER KRAMER: Okay. So was that
21 after this was submitted?

22 MR. MCKINSEY: This meaning the --

23 HEARING OFFICER KRAMER: Exhibit 6018.

24 MR. MCKINSEY: Which one is 6018?

25 HEARING OFFICER KRAMER: 6018, it's what --

1 can you put it up on the screen, Susan?

2 It's what Mr. Sarvey characterizes or calls
3 the SDG&E opening comments on D.15-05-01.

4 MR. MCKINSEY: So that's SDG&E's opening
5 comments on the decision that we discussed at the
6 evidentiary hearings and had evidence on, which was
7 the decision that occurred prior to the evidentiary
8 hearings that was a tentative proposed ALJ disapproval
9 of the 600 megawatt PPTA.

10 I think they have another set of comments
11 after that. I'm not debating it either way. But in
12 either case, that's the PUC's proceeding which, I
13 think as we argued, could still be going on if
14 somebody appeals something and could be modified
15 further, but I'm not -- And most of this occurred
16 after the evidentiary hearings, that's correct.

17 HEARING OFFICER KRAMER: Okay. Well, I'm
18 trying to figure out if Mr. Sarvey's cherry picking
19 the evidence here and just finding earlier statements
20 that arguably were at least impliedly refuted by later
21 statements from SDG&E, or what's going on.

22 MS. COCHRAN (Assisting Committee with WebEx):
23 You have to make me a presenter if you want to share
24 that document.

25 HEARING OFFICER KRAMER: Okay.

1 MR. MCKINSEY: I don't think I disagree with
2 Sarvey's characterization or presentation of SDG&E is
3 saying. The SDG&E filed comments, and from their
4 world they see this as they're procuring 500
5 megawatts.

6 That was our point when we had a motion prior
7 to the evidentiary hearings that proposed that the
8 project owner had to submit a new petition to amend or
9 an application that the project had changed, and we
10 said no, the procurement process undergoing at the PUC
11 has nothing to do with the project that's being
12 approved before the Commission, and the Commission is
13 being asked to approve a 600 megawatt project, and
14 during that discussion we noted that it's quite
15 possible that the procurement scenario could only be
16 500; it could be 500 with one, 100 for another; it
17 could be 300; it could be the entire thing operates as
18 a merchant. That doesn't really change the
19 environmental land use and overall decision making
20 that the Energy Commission did.

21 I'm not really concerned about most of the
22 points that Mr. Sarvey is making in terms of their
23 accuracy because I think this was something that the
24 committee already figured out, that they're largely
25 irrelevant unless they involve statements by the

1 project owner saying that the project owner has chosen
2 to change the project. And as we got the project
3 owner at the time to note, that hasn't occurred. The
4 project that's before the Commission is a 600 megawatt
5 project and that remains what they're going to build.

6 HEARING OFFICER KRAMER: Okay, let's go off
7 the record for a minute.

8 [Off the record.]

9 HEARING OFFICER KRAMER: Okay. Well, I'm
10 just trying to understand the evidence that he's
11 offering.

12 Mr. McKinsey, we understand your point that,
13 and in the decision we did, in fact, say things to the
14 effect that we're not asking the PUC to tell us how
15 many megawatts we need to approve here, but we are
16 making a decision that is somewhat independent of
17 that.

18 MR. MCKINSEY: Mr. Kramer, the point I really
19 wanted to emphasize is in the document that Mr. Sarvey
20 cites, SDG&E uses terms like 'this project' and 'this
21 capacity' but none of those are the words of the
22 project owner that submitted and is seeking this
23 approval, they're the words of the utility talking
24 about procurement.

25 And so to me the relevancy is the most

1 important component here. If Mr. Sarvey was bringing
2 up a statement that the project owner had come out and
3 said 'We've changed the project. New equipment, new
4 design, new capacity,' whatever it was, that would be
5 very relevant.

6 But if they're statements in a proceeding
7 about procurement of a certain number of megawatts,
8 that it has some degree of relevance but I don't think
9 that anything has really changed whatsoever from when
10 we heard evidence on this at the evidentiary hearings,
11 because at the evidentiary hearings and even prior to
12 those through a motion we had a discussion, we had
13 evidence about the project owner's intent, the
14 procurement proceeding, and the committee was very
15 fully informed when they crafted the PMPD.

16 HEARING OFFICER KRAMER: Okay. Mr. Sarvey,
17 did you have anything else?

18 MR. SARVEY: I can just move on to the next
19 exhibit if you like, Mr. Kramer.

20 HEARING OFFICER KRAMER: Okay, which one
21 would that be?

22 MR. SARVEY: Exhibit 6019.

23 HEARING OFFICER KRAMER: Go ahead, explain
24 why it's relevant.

25 MR. SARVEY: Well, Exhibit 6019 is the public

1 version of the confidential 500 megawatt PPTA, and
2 that PPTA is quoted extensively in this proceeding as
3 evidence of the need for the Carlsbad project and
4 evidence that the electrical system is changing.

5 I would like to introduce the confidential
6 version of the 500 megawatt PPTA and explain how it
7 affects the transmission configuration, the
8 availability of the ACECP, and how the PPTA affects
9 staff's displacement theory and the utility of this
10 power plant.

11 The PPTA was provided to the parties on June
12 24th, 2015, which is very recently so I was unable to
13 submit it before the evidentiary hearings.

14 HEARING OFFICER KRAMER: So you're proposing
15 to submit the confidential document?

16 MR. SARVEY: I would like to. I don't see a
17 procedure in the Energy Commission that I can do that.
18 I would require somebody from the committee to file a
19 nondisclosure agreement. Of course the applicant
20 already knows the content of it because they executed
21 it, but I think there's some relevant information in
22 there for the decision as far as electrical
23 connections and, like I said, how this project will
24 operate and how it's allowed to operate under the
25 PPTA.

1 HEARING OFFICER KRAMER: Okay. Well, an
2 offer of proof is not telling us that I've got some
3 information that you really probably want to see. You
4 need to tell us what you believe it would prove to us.

5 MR. SARVEY: I would like to tell you exactly
6 what it says, but I can't at this point because I've
7 signed a nondisclosure agreement, but I did tell you
8 how I thought it affected the project.

9 Number one, it changes the electrical
10 connection configuration. It puts restrictions on the
11 power project that are not part of its air permit or
12 part of anything in this proceeding. And it changes
13 the way that this project operates and how it's
14 viewed. And observed I can't say that because I've
15 signed a nondisclosure agreement that would require
16 someone from the committee or someone else to sign a
17 nondisclosure agreement so I could explain this
18 information to you, but...

19 HEARING OFFICER KRAMER: In what way would it
20 change the operations to the extent you can tell us? I
21 mean, does it --

22 MR. SARVEY: I'm not going to get myself in a
23 world of hurt here over at the PUC to explain what I
24 just explained to you just now. I mean, it's
25 confidential, I can't just blurt it out.

1 HEARING OFFICER KRAMER: Okay. Anything else
2 on 6019?

3 MR. SARVEY: That's all I have to say about
4 6019.

5 HEARING OFFICER KRAMER: Okay. And then the
6 rehearing requests, you're just making the point that
7 the PPTA approval could change possibly at some future
8 point; is that it?

9 MR. SARVEY: And that it's not a final
10 decision. The PMPD treats it as the final decision on
11 the matter and it's not. Like I said, there's five
12 rehearing requests on the decision and I suspect
13 there's going to be some changes, but I don't have a
14 crystal ball to tell you exactly what they're going to
15 be.

16 HEARING OFFICER KRAMER: But what does that
17 mean for us? Are you suggesting we need to wait until
18 all that sorts itself out?

19 MR. SARVEY: Well, that's certainly up to
20 you. What I'm suggesting is you need to at least note
21 in the PMPD that it's not a final decision.

22 HEARING OFFICER KRAMER: Any other party,
23 what's your -- you want to tell us what your
24 understanding is of the status of that decision?

25 MR. MCKINSEY: Yes. Actually, Mr. Sarvey's

1 characterization is fairly accurate. There is a final
2 decision and there are rehearing requests pending on
3 that PPTA.

4 Interestingly, I think that status isn't any
5 different from a relevancy perspective than the status
6 we had at the time of the evidentiary hearings or
7 through the period of briefing, which is that the
8 power purchase process was beginning to appear like it
9 either wouldn't be approved or it might be approved at
10 a lower level, and the argument and discussion we had
11 was whether that was relevant.

12 And so I think the committee made the right
13 decision to recognize that the procurement proceeding
14 was independent of the land use and environmental
15 evaluation of the project that was before the
16 Commission, and that nothing has changed in that
17 regard at all.

18 HEARING OFFICER KRAMER: Okay. Well, we like
19 to get our facts straight when we're just mentioning
20 the document. Does anybody disagree that we should
21 note that we're told that there are reconsideration
22 requests and therefore it may not be final?

23 MR. MCKINSEY: Well, it is the decision. As
24 much as when the Energy Commission issues a decision
25 document and somebody files a petition for

1 reconsideration or appeal to supreme court, it still
2 stands as the decision unless it's modified.

3 But you could note that there are rehearing
4 requests pending and that would be the most accurate
5 characterization, but it is the decision.

6 And Mr. Sarvey's correct that the outcome of
7 a rehearing proceeding could be to have issuance of a
8 revised or a new decision, but that's not the case
9 right now; it stands as the decision document.

10 HEARING OFFICER KRAMER: Okay. Mr. Ratliff,
11 did you want to say something?

12 MR. RATLIFF: Well, I agree with Mr.
13 McKinsey. I think at the Energy Commission we would
14 call this a final decision subject to reconsideration,
15 you know. But if it's merely a matter of what you
16 call it, you can call it the decision or the final
17 decision, I think that's accurate. It could change,
18 of course, as could our final decisions as well.

19 HEARING OFFICER KRAMER: Okay.

20 MR. SARVEY: Mr. Kramer.

21 HEARING OFFICER KRAMER: Mr. Sarvey?

22 MR. SARVEY: One more thing that I think is
23 important about these rehearing requests is that these
24 generally are time-consuming to get to a final
25 decision, and I think that it gives the Commission a

1 little more time to where they don't have to rush and
2 get this thing approved, they can take a better look
3 at the PMPD, possibly issue an RPMPD or maybe just
4 postpone its adoption and make sure everything's fine
5 tuned. It just gives you a little more time because,
6 obviously as soon as the CEC makes their decision,
7 nothing happens until the PUC makes their decision
8 because at that time that's when the contract will be
9 finalized and then the applicant can go get his
10 financing.

11 HEARING OFFICER KRAMER: Okay. So did you
12 have anything else to say about your motion, Mr.
13 Sarvey, the first one?

14 MR. SARVEY: No, that's it. Thank you, Mr.
15 Kramer.

16 HEARING OFFICER KRAMER: Okay. Any response
17 beyond what you've already said from the applicant or
18 staff?

19 MR. MCKINSEY: No, I have no other thing to
20 say about it.

21 HEARING OFFICER KRAMER: Staff:

22 MR. RATLIFF: I think the committee has
23 acknowledged that the CPUC process and the Energy
24 Commission power plant licensing process are closely
25 interrelated and address different issues and produce

1 different products. But even though they are very
2 closely related, in the name of commonsense and
3 efficiency they are not supposed to duplicate each
4 other.

5 The opponents of Carlsbad tend to conflate
6 the two processes and argue to the PUC that they
7 should be doing an environmental impact report for the
8 process, and argue to the Energy Commission that we
9 should be doing a need determination for the project.
10 And I think this conflation is to be avoided by the
11 Energy Commission just as it's being avoided by the
12 PUC in rejecting the invitation to start doing
13 environmental documents for power plant projects.

14 As I think the proposed decision
15 acknowledges, power plants, at least privately owned
16 power plants in California, can only be built when
17 each of those processes grants a particular product.
18 For the Energy Commission it is a license to build the
19 power plant. From the PUC it is a contract that
20 guarantees that these capital intensive projects will
21 have a way of being financed.

22 If the Energy Commission grants a license but
23 there is no PPTA issued by the PUC, there is a very
24 vanishingly small possibility that this project would
25 ever be built. So I think it is a mistake for the

1 Energy Commission to think that it should assume the
2 responsibility for trying to determine the need or
3 trying to second guess what the outcome at the PUC
4 will be.

5 I mean, there are several possible outcomes.
6 It may approve the current decision. It may change
7 the decision, and if it changes the decision and goes
8 back to the original decision, it looks forward to the
9 future to determine what actual renewable projects are
10 available that might suffice in place of this project.

11 But if any of those things happen, it really
12 has no bearing on whether this agency should act,
13 because only when the PUC approves the PPTA is it
14 likely that there would be financing for the project.

15 HEARING OFFICER KRAMER: Okay, thank you.

16 Have any other parties joined us? I don't
17 see any new telephone participants and nobody's new in
18 the room, but I want to give them an opportunity to
19 speak up.

20 Okay, Mr. Sarvey, if you want to make a brief
21 wrap-up comment on this motion, then we'll go on to
22 the second one.

23 MR. SARVEY: Okay. Well, I just wanted to
24 say that I agree with what Mr. Ratliff is saying here.
25 There's a very slim possibility that this project will

1 go forward unless it gets a PPTA, and at this point
2 the best it's going to get is a 500 megawatt PPTA.
3 And while the applicant is asserting they're still
4 going to build 600 megawatts, I think that's highly
5 unlikely and I think the evidence shows that, and I
6 agree with Mr. Ratliff that, you know, unless they get
7 a full 600 megawatt PPTA, they're not building 600
8 megawatts, and I think that's just reality and what
9 the evidence shows.

10 Thank you.

11 HEARING OFFICER KRAMER: Okay, thank you.
12 Let's move on to motion number two, to require the
13 applicant to, I believe your motion said retroactively
14 pay the amendment fees, so pay for all the expenses of
15 the Commission from the start of this amendment
16 proceeding.

17 We note that staff has told us, I believe,
18 that they're going to start collecting those expenses
19 from July 1st of this month, which was the effective
20 date of that requirement.

21 Again, Mr. Sarvey, you get the first crack at
22 it.

23 MR. SARVEY: Well, SB83 basically remedies a
24 defect in the Commission's amendment process for
25 applicants that have been shifting the cost putting

1 their amendment proceedings onto rate payers. And we
2 already that Carlsbad Energy only paid \$281,000 to
3 process their 2007 application, and that's in Exhibit
4 6011. And we know from 6012 that the CEC spent
5 \$543,000 on consultants alone, so there's already been
6 a lot of damage done.

7 I requested that the Commission through a
8 public records request tell me how much the Commission
9 had spent internally on the 2007 proceeding, but that
10 does not seem to be a part of the Commission's
11 accounting.

12 So circumstances like this one where the
13 applicants are passing amendment processing costs on
14 to the rate payers is what prompted the Commission to
15 ask the Legislature to require the amendment fee and
16 require the applicant to cover the expenses.

17 Now we don't know how much this amendment has
18 cost rate payers because staff didn't provide us an
19 accounting of how much this amendment has cost the
20 rate payers to date. Essentially I would imagine they
21 don't keep track of it.

22 And the applicant argues that the amendment
23 fees should not be reassessed retroactively and that
24 Carlsbad Energy should be allowed to continue to shift
25 the costs of their merchant generating application on

1 to the rate payers as a form of corporate welfare.

2 The problem with the applicant's argument is
3 that this amendment isn't over, it's still going on.
4 If in fact the amendment was over, there would be no
5 legal argument to require the applicant to pay any
6 part of the amendment fee.

7 So the applicant should be required to pay
8 the cost to process this amendment as the amendment is
9 still ongoing and a legal justification exists, it's
10 call the beneficiary pays principle. And the
11 applicant reaps the benefit of the amendment, not the
12 rate payers, so there's no reason why we should
13 continue to subsidize this amendment and we should
14 charge the full amount, the amendment's not over.

15 If the amendment was over, then I could see
16 you say, oh, we're going back and punishing and being
17 punitive to the applicant, but we're not. The
18 amendment is still ongoing, and that's my argument.

19 HEARING OFFICER KRAMER: Okay. Applicant, do
20 you want to respond?

21 MR. MCKINSEY: Yeah. And I'd like to begin
22 by noting that the project owner believes that Mr.
23 Sarvey is very incorrect about the actual effect of
24 the propo -- and that now in effect changes, and that
25 the burden on the rate payer, meaning the individuals

1 paying for the electricity from a project, whether
2 that's through a PPTA or its merchant provided
3 electricity, is when the cost of something is
4 internalized.

5 And so the effect of SB83 will actually be to
6 impose costs on the rate payer, that right now the
7 costs of the proceeding are being imposed on the tax
8 payer. So the moral argument that Mr. Sarvey's making
9 is just dead wrong and inaccurate and that SB83 will
10 shift costs in the long run to the rate payer, because
11 it means that a project applicant coming before the
12 Commission or a submitter of a PTA will now roll into
13 the costs of the proceeding the filing fees and factor
14 those into their costs that they underline into the
15 capital costs of the project.

16 But the bigger scheme of things has been that
17 for the last decade the State of California has been
18 imposing costs so that the project owners and the
19 applicants that request action on projects from the
20 Commission pay for those costs. And those laws have
21 all really been derived to reduce the burden on
22 taxpayers so that the Energy Commission is collecting
23 more money from the parties before it, particularly
24 the proponents for projects, as opposed to having the
25 rate payers support all of those proceedings.

1 That's been going on for a decade or maybe
2 even a little more than that, and over that time the
3 Legislature and the State of California has been
4 ratcheting up and asking project proponents to pay
5 more, and more and more of those proportions. And
6 SB83 is just another iteration of that where they're
7 now recognizing that one of the shifts that's occurred
8 over the last decade is a significantly larger number
9 of amendments, and that the cost of those amendment
10 proceedings is notable, and so it's giving the Energy
11 Commission now the ability to collect costs on those
12 amendment proceedings.

13 So I want to correct that conceptual argument
14 and moral argument as just being dead wrong.

15 That said, really I think throughout the
16 entire history of the beginning of the State of
17 California to ask for filing fees they haven't been
18 retroactive and that's the simple question: are they
19 or are they not retroactive?

20 And clearly, this has not been enumerated or
21 described as a retroactive that you'll go back and
22 collect things, and that's simply how it is.

23 The other note I would make is I don't know
24 that a motion from an intervener in a proceeding
25 asking a committee who is tasked with evaluating and

1 issuing a decision on a petition to amend in this
2 case, but even if it was an AFC, is the correct
3 setting or forum.

4 And I'm not even sure that an intervener or
5 any party has standing under SB83 to ask the
6 Commission to do something differently
7 administratively about how they're doing budgeting and
8 costs.

9 So I think this motion fails from a standing
10 perspective from the get-go. That if the Commission
11 is or is not adhering to SB83, that's a Commission
12 decision and it's a much more complex question about
13 how you would go about attempting to establish
14 standing and order the Commission to take some
15 different action, but I don't think it belongs in an
16 environmental evaluation proceeding of a PTA. It's a
17 budgeting decision that either gets the full attention
18 of the Commission or would be the normal place where
19 somebody goes to court and tries to get an order
20 directing the Commission to do something differently
21 than the way they're conducting their business.

22 HEARING OFFICER KRAMER: Thank you.

23 Staff?

24 MR. RATLIFF: Well, the staff position is
25 simply to reiterate the fundamental law in California,

1 that laws do not apply retroactively unless there is a
2 clear legislative intent that they do so.

3 The suggestion that the applicant pay for
4 expenses already incurred would require the
5 retroactive application of the law. However, staff
6 does believe that it's reasonable to assess costs
7 going forward from July 1st when the statute became
8 effective. And the deputy director for siting has
9 told me that he intends to be informing staff to keep
10 accounting of the hours that they spend on this
11 project, and of the committee on the decision side to
12 do likewise, so that we would be billing presumably
13 for those future efforts related to the proceeding.

14 HEARING OFFICER KRAMER: By future you mean
15 starting the beginning of this month?

16 MR. RATLIFF: Starting at the beginning of
17 the month, yes.

18 HEARING OFFICER KRAMER: Okay. It wasn't
19 clear to me from your response, are you asking that
20 the committee memorialize that in the proposed
21 decision in some way?

22 MR. RATLIFF: No.

23 HEARING OFFICER KRAMER: So you're just going
24 to go forward and do that.

25 MR. RATLIFF: Yes.

1 HEARING OFFICER KRAMER: Okay. On the point
2 of where the money's coming from, Mr. McKinsey, the
3 Commission is financed in part from a, I think we'd
4 probably call it a fee. I think PG&E on my utility
5 bill calls it a tax for probably their own 'stick it
6 to us' reasons. But are you taking into account that
7 source of some of the funding for the Commission's
8 activities?

9 MR. MCKINSEY: I am, but the real point is
10 that when a law comes into place that tells an
11 applicant that they're going to have to pay a certain
12 amount of money, so when the first following,
13 beginning in the last decade, when the first law
14 showed up that said you will charge a filing fee, and
15 prior to that it had been free, that immediately
16 became something that got rolled into the pro forma
17 that went to the rate payers, and that the effect of
18 codifying fees up front is that it imposes it directly
19 on the rate payers that are buying the electricity
20 that result from that project.

21 Whereas, when it's not an up-front fee or
22 some clearly spelled-out expense, the cost is being
23 borne by the funding sources for that agency, in this
24 case the Energy Commission. And it's certainly much
25 more complicated to decide where the money comes from

1 that pays for the Energy Commission, but in the end,
2 any of the money that rate payers have paid under
3 those fees has simply allowed the general fund to
4 reduce their burden, the effect is the same.

5 But there is no connection between a resident
6 who is sitting in PG&E's service territory paying a
7 fee to the Energy Commission and a resident sitting in
8 SDG&E's service territory where a PPTA may indeed be
9 imposed.

10 The difference, though, is when you codify it
11 and you make it an expense, that PPTA that serves a
12 resident in SDG&Y's service territory becomes a rate
13 payer and is now going to pay that expense because
14 it's factored into the cost of the project that gets
15 amortized out and put into the cost.

16 And that's the real gist of what I'm getting
17 at, that the shift is directly to the rate payer who's
18 buying the energy. That's the effect of imposing the
19 fees and making them a clearly required requirement.
20 That's the long run effect.

21 The short run effect is slightly different,
22 that to the extent that the current PPTA gets approved
23 by this project, it wasn't factored into that, and
24 that becomes a cost that the project advocate has to
25 bear that they didn't factor into those expenses.

1 But the characterization that somehow this
2 law is going to shift cost away from the rate payer is
3 simply incorrect; it puts the cost on the rate payer
4 as opposed to a general cost in the state of
5 California that has to be paid for.

6 HEARING OFFICER KRAMER: Because they're
7 going to be paying an additional amount and probably
8 will not be relieved of that fee that I spoke of.

9 MR. MCKINSEY: Right.

10 HEARING OFFICER KRAMER: Okay. So Mr.
11 Sarvey, this doctrine you referred to that would let
12 us reach back in time, I was trying to find it in your
13 motion and I couldn't find any citation to it. Was
14 there one I overlooked?

15 MR. SARVEY: If you'll allow me, I'll thank
16 Mr. Ratliff for including it in his submission, and
17 I'll read it to you so you understand.

18 But first I want to say that Mr. McKinsey
19 doesn't quite understand the funding of the Energy
20 Commission. Funding for the Energy Commission comes
21 from Energy Commission taxes, you said, not the
22 taxpayers.

23 And the costs of a PPTA is normally
24 determined through an RFO where the developer submits
25 his bid, and as Mr. McKinsey says, he's stuck with his

1 bid price.

2 The cost to site the project is a business
3 expense that the owner is at risk for. If Carlsbad
4 Energy doesn't get a PPTA and doesn't construct this
5 project, this rate payers have financed this
6 amendment.

7 So for example, in the original proceeding
8 that I talked about earlier where the CECP was never
9 built, the rate payers took that overrun. The
10 consulting fees themselves were \$535,000, some figure
11 like that, and they only paid \$281,000 for the
12 amendment, so the rate payers got stuck for \$261,000
13 for a project that was never built.

14 And I just want to read this part that Mr.
15 Ratliff included in his response, and it's part of the
16 SB83 bill analysis, and it states:

17 *"The beneficiary pays principal."*

18 *And it talks about, "Because they reap only a*
19 *portion of the benefits, the rate payers*
20 *should not fund the majority of costs*
21 *associated with processing amendments to*
22 *power plant certification. Instead, project*
23 *owners should cover these costs consistent*
24 *with the well-established beneficiary pays*
25 *principal.*

1 *"In the case of deregulated energy,*
2 *project owners develop, build, and modify*
3 *power plants to sell energy for a profit.*
4 *Thus, while reliable energy supply is*
5 *important to the public, certification and*
6 *amending certification for power plants also*
7 *has a clear benefit to the project owner*
8 *above and beyond the benefit to the public.*
9 *As the primary beneficiary the project owner*
10 *should pay a fee to cover the cost of*
11 *processing amendments to certification. The*
12 *new fee would be part of a project owner's*
13 *costs of doing business just like*
14 *certification fees, compliance fees, and*
15 *monitoring fees."*

16 So that's from the bill analysis from the
17 Senate, and it lays it out pretty straightforward.

18 And as I said, if they don't build this
19 project, I mean, it doesn't matter either way, the
20 rate payers get stuck with the amendment because all
21 they're paying is a yearly compliance fee. I don't
22 know what this amendment cost the Commission, it's
23 been going on for over a year.

24 The beneficiary pay principle, they should
25 pay the full amount. This amendment is still ongoing,

1 it's not over.

2 If this amendment was over, I think you could
3 make an argument that you're being punitive in being
4 retroactive, but it's not over, so the fees should
5 apply.

6 HEARING OFFICER KRAMER: You are at least
7 happy that they're planning on collecting fees going
8 forward from July 1.

9 MR. SARVEY: Very happy, Mr. Kramer, but I
10 still am stinging from the \$260,000 beating that the
11 rate payers took on the original CEC proceeding. And
12 I'm still stinging, I don't know how much money we've
13 spent on this amendment, but I don't see that as a
14 rate payer expense, particularly when it's very
15 possible this project will never be built.

16 HEARING OFFICER KRAMER: Okay. That was your
17 final word, then?

18 MR. SARVEY: Yes, sir, thank you.

19 HEARING OFFICER KRAMER: Okay. Hold on a
20 second.

21 Okay. Earlier I suggested that we might try
22 to orally rule on these at the end of the closed
23 session, but we've decided that we will not. What
24 we'll do is put out written orders, ideally by the end
25 of the week, so look in your email basket for those.

1 And we thank you. We'll take the two motions
2 under submission.

3 The next item on the agenda is public
4 comment. And again, as I said earlier, we're not
5 collecting comments on the PMPD, but the Bagley-Keene
6 Act requires that we take public comment of up to
7 three minutes per person on any items that appears on
8 this agenda.

9 We have no members of the public in the room
10 with us.

11 Do we have anybody on the telephone that
12 wishes to make a public comment?

13 Susan, is everybody muted of their own
14 accord? Okay. So we have no public comments, then.

15 Okay. So the committee is going into a
16 closed session to deliberate on matters for decision
17 of the committee. In this case it is the two motions
18 and also we are working on revisions or an errata to
19 the PMPD, the plan being that we're going to go
20 forward with the consideration of the PMPD and then
21 the errata at the July 30th business meeting of the
22 full Commission.

23 So we'll adjourn into closed session. That's
24 pursuant to Government Code Section 11126(c)(3), which
25 allows a state body, including a delegated committee

1 such as this, to hold a close session to deliberate on
2 a matter in a proceeding that we are required by law
3 to conduct.

4 When we come back out of closed session, as I
5 said a minute ago, we'll simply come back to announce
6 that we're finished with it, but there's no reason for
7 anybody to stick around because we're not planning on
8 announcing any particular decisions.

9 We're hoping to have the errata out in a few
10 days, so look for that also. And then we will see you
11 at the business meeting on July 30th.

12 You want to say anything?

13 COMMISSIONER DOUGLAS: No, I'd just like to
14 thank everyone and we will, as the hearing officer
15 said, get out determinations on these motions this
16 week if we can. Thanks.

17 HEARING OFFICER KRAMER: So we're adjourned
18 to a closed session and we will be coming back at some
19 point to announce that we have completed it. Thank
20 you.

21 We're going to leave the WebEx open for those
22 of you who want to, for some reason, want to stay on
23 the line to hear that. And thank you.

24 [Adjourned to closed session at 3:24 p.m.]

25 [Returned to open session at 4:06 p.m.]

1 HEARING OFFICER KRAMER: We're back on the
2 record. This is Paul Kramer, the hearing officer for
3 the Carlsbad Amendments Committee. Coming back to
4 inform, it appears nobody on the WebEx, nobody remains
5 that is, that the committee has concluded its closed
6 session, and that was done at about 4:02 p.m.

7 And there being no further business, the
8 committee will adjourn. We will have written orders
9 on the two Robert Sarvey motions and an errata to be
10 filed later this week.

11 So we're adjourned. Thank you.

12 (Adjourned at 4:07 p.m.)

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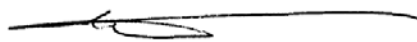
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I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of July, 2015.



PETER PETTY
CER**D-493
Notary Public

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Terri Harper
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