

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	206069
Document Title:	Motion To Reissue Notice of Pending Members Proposed Decision and Reopen Evidentiary Record -
Description:	To Accept Revised Final Determination Of Compliance
Filer:	Robert Simpson
Organization:	Helping Hand Tools (2HT)
Submitter Role:	Intervenor
Submission Date:	9/11/2015 12:12:37 PM
Docketed Date:	9/11/2015

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

Petition to Amend
The Carlsbad Energy Center

Docket Number 07-AFC-06C

**MOTION TO REISSUE NOTICE OF PENDING MEMBERS PROPOSED DECISION
(PMPD) AND REOPEN EVIDENTIARY RECORD TO ACCEPT REVISED FINAL
DETERMINATION OF COMPLIANCE (FDOC)**

The PMPD should have been distributed to California Department of Fish and Wildlife (CDFW) and other “interested agencies” pursuant 1749 of the Commission rules. I have received responses to public records requests from the CEC and CDFW¹ and neither has produced any evidence that this occurred .

Jared Babula Senior Staff Counsel California Energy Commission in fact responded: “ CDFW was not included in any of the lists noted on the PMPD notice, (7260S, 7261S, 7262S, 7263S).”

Catherine Cobb, Associate Governmental Program Analyst, Department of Fish and Wildlife responded: “The Department has conducted a diligent search of its records. Attached, please find copies of all documents in response to your PRA request. No information has been redacted, and no documents have been withheld.” and no notice regarding the project was produced. It appears that CDFW only received info after decisions were made. The CEC can correct these fatal defects in its process by reissuing the PMPD and distributing it as required by law. Interested agencies must be given the opportunity to consider the proposed decision.

The Solicitation for agency participation also did not include CDFW according to its service list and responses from the agencies. That notice is also factually incorrect, it states: “Transmission components and alignments will not be modified from the licensed CECP.”²

Additional basis for this motion can be found in my Motion for Reconsideration and 60 Day Notice to Sue which would be mooted if the PMPD notice was reissued.

¹ Exhibit 1 and 2

² http://docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN202717_20140717T093934_Solicitation_For_Agency_Participation_in_the_Review_of_Amen_dmen.pdf

Mr. Sarvey has also indicated that he would withdraw his Motion and notice if the PMPD was reissued.

Also, the San Diego Air Pollution Control District just issued a revised Final Determination of Compliance³ that the parties should consider in context of the PMPD. The revised FDOC should be included in the evidentiary record for this proceeding.

§ 1749. Presiding Member's Proposed Decision; Distribution; Comment Period.

(a) At the conclusion of the hearings, the presiding member, in consultation with the other committee members shall prepare a proposed decision on the application based upon evidence presented in the hearings on the application. The proposed decision shall be published and within 15 days distributed to interested agencies, parties, and to any person who requests a copy. The presiding member shall publish notice of the availability of the proposed decision in a newspaper of general circulation in the county where the site is located.

Rob Simpson

Executive Director
Helping Hand Tools
27126 Grandview Ave.
Hayward CA. 94542
rob@redwoodrob.com

³ Exhibit 3

EXHIBIT 1

Subject: RE: records request--status update
From: "Babula, Jared@Energy" <Jared.Babula@energy.ca.gov>
Date: Thu, Sep 10, 2015 4:39 pm
To: "rob@redwoodrob.com" <rob@redwoodrob.com>
Cc: "Babula, Jared@Energy" <Jared.Babula@energy.ca.gov>

Mr. Simpson,

I just want to give you a status report of your request. Regarding the first part of your request, documents associated with the notice of the Carlsbad amendment and the PMPD. The excel spread sheets I provided, which list various agencies included DFW, were used for the AFC and then were updated and used for the Carlsbad amendment. These identified agencies were sent the notice and respective documents. In addition, CDFW, Costal Commission, USFWS and NOAA received the amendment when the Commission's biologists provided the amendment and information on the first workshop to these agencies.

Regarding the PMPD, I am still working to locate any documents that show notice of the PMPD went to CDFW. CDFW was not included in any of the lists noted on the PMPD notice, (7260S, 7261S, 7262S, 7263S).

For the second portion of your request, emails/communications/letters for the last two years, between CEC Commissioners/advisor and CPUC Commissioners/advisors; NRG; SDG&E I, am currently working with each of the commissioners' offices to locate and collect all responsive materials and to provide you with all disclosable public records as soon as possible. I do want to clarify that your request was adequate for the Commission to ascertain which records are responsive and disclosable records, my prior suggestion of categories, (IEPR, RPS etc) was simply suggestive in case there was a particular topic you were interested in but may have not been aware of those areas in which the CEC and CPUC collaborate. Please feel free to contact me if you have any questions.

Jared

From: rob@redwoodrob.com [mailto:rob@redwoodrob.com]
Sent: Friday, September 04, 2015 10:03 PM
To: Babula, Jared@Energy
Subject: RE: records request

Hi Jared,

I had never noticed that mailing list reference, on the bottom of the notice thanks for pointing that out. Now that I see it I do not find anything on the agency list's that identify them as the lists denoted (Sent to mailing list numbers: 7260S, 7261S, 7262S, 7263S). The lists both indicate that they were modified recently. Can I have

copies of the original lists and is there something that correlates to the list numbers on the notice?

I have asked CDFW/G for their records and am waiting for their substantive response. I compliment you on your responsiveness.

My concern started notice when I did not receive notice of the amendment and when I noticed that the agency participation notice did not include CDFW.

http://docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN202717_20140717T093934_Solicitation_For_Agency_Participation_in_the_Review_of_Amendmen.pdf

I also found the notice factually incorrect; "Transmission components and alignments will not be modified from the licensed CECP." and more of a sale pitch than alert.

You mentioned that you provided "the list of agencies that were provided letters/emails regarding the availability of the AFC or PMPD" are you including the amendment application and PMPD in this statement.

So, I really still do not have anything that shows that notice or the PMPD for the amendment has been served or distributed to CDFW and I am still looking for that.

Regarding the communications between agencies and regulated industries. I feel like my chance discovery of collusion between Weissenmiller and Peevy was one of the main factors in Peevy's

ouster. <http://www.sandiegouniontribune.com/news/2015/feb/28/peevey-rallied-pio-pico-approval/>

I think that there is more information out there but would find the request for emails demonstrating collusion between regulators and the regulated or other regulators problematic. So I am not sure of another way to find the info without such a broad brush approach.

Thanks
Rob

----- Original Message -----

Subject: RE: records request

From: "Babula, Jared@Energy" <Jared.Babula@energy.ca.gov>

Date: Fri, September 04, 2015 2:35 pm

To: "rob@redwoodrob.com" <rob@redwoodrob.com>

Rob,

The excel spreadsheets I provided contained the list of agencies that were provided letters/emails regarding the availability of the AFC or PMPD. I have attached those documents again. The PMPD notice identifies the various service lists that were provided with the notice and PMPD links. Since going to an electronic system we don't typically send physical documents to other agencies unless they want them. The e filing system provides a link to the document. Publishing is filing the document and sending it out to all the entities on the various lists. For the AFC the applicant often provides other agencies with actual binders or CDs of the project around the time they file with us but you would have to check with DFW if the applicant filed anything with them. I am not directly involved with the distribution process, so if the information I have provided still does not answer your questions let me know and I will try and track down the

answer from the folks who handle document distribution.

Regarding the CEC-PUC emails. I don't know how many there will be. I was thinking if we could screen based on a topic of interest than we could provide you what you wanted in a quicker manner and to better focus on which Commissioners and their advisors to focus on. I can suggest four broader topic areas in which we have some level of joint work with the CPUC. 1) Nuclear/SONGS, 2) grid reliability, 3) oil by rail safety, 4) power plant siting, 5) Solar rebate program, 6) Renewable Portfolio Standard. Let me know if one of these topic areas is of interest. Thanks.

Jared

From: rob@redwoodrob.com [<mailto:rob@redwoodrob.com>]
Sent: Friday, September 04, 2015 12:45 PM
To: Babula, Jared@Energy
Subject: records request

Hi Jared,

First I wish to inquire if you have sent the entire response to my requests re. California Department of Fish and Game or Wildlife and compliance with; 1749 The proposed decision shall be published and within 15 days distributed to interested agencies, parties, and to any person who requests a copy.

While I found evidence that the PMPD was published I have found no evidence that it was distributed, did I miss something or is there any other evidence that the PMPD was distributed. Is there a record of how many copies of the PMPD were published and how many are left or some record of someone receiving instruction to distribute the document?

I am not sure yet how to address your contention that my other request was too broad. If it were limited to a select number of commissioners or shorter time frame or if the records were placed on cd or a hard drive would that simplify the scope. How many records are we looking at as the request stands and how many would not be too broad. I read these things about Clinton releasing 30,000 pages of emails and wonder what the threshold for being too broad is in this context.

thanks
Rob

----- Original Message -----

Subject: records request
From: "Babula, Jared@Energy" <Jared.Babula@energy.ca.gov>
Date: Thu, September 03, 2015 5:05 pm
To: "rob@redwoodrob.com" <rob@redwoodrob.com>
Cc: "Babula, Jared@Energy" <Jared.Babula@energy.ca.gov>

Mr. Simpson,

Just following up on my last email to ensure you received the responsive documents I provided and if you had specific topics/proceedings to narrow down your request for communications between Commissioners at the Energy Commission and the Commissioners at the CPUC. I did send you some SDG&E presentations which were presented to CEC and

CPUC commissioners related to SOCAL grid infrastructure. Thanks

Jared

The responsive documents are identified below with my commentary Rob Simpson

agency-mailing-list.xlsx

CDFW not included

agency-participation-letter-2007.pdf

CDFW not included

CDFW Coordination_Carlsbad.jpg

CDFW not included although an incomplete email address appears to include a CDFW employee focused on once through cooling issues. Please confirm if this was actually sent to his correct email address. Please also indicate if there is a particular person, department or address for CDFW participation in sitings.

CEC-CPUC-letter-CAISO.pdf

Please explain how this is responsive

newspaper-notice-carlsbad.pdf

notice-PMPD-2011.pdf

CDFW not included

notice-revised PMPD-2012.pdf

CDFW not included.

ROC-DFW-2007.pdf

CDFW communication 2007.

second agency mailing list.xlsx

CDFG included in 2007 mailing list, but the document indicates that it was modified after my record request.

EXHIBIT 2

Subject: Public Records Act Request No. 15-09-352

From: Wildlife PRA Coordinator <PRACoordinator@wildlife.ca.gov>

Date: Thu, Sep 10, 2015 1:26 pm

To: "rob@redwoodrob.com" <rob@redwoodrob.com>

Attach: ACECP_07-AFC-06C_Revised_Bio-6_BRMIMP_07162015.pdf

RE: Biological Resources MMP update.eml

BRMIMP_ApdxA Resumes.pdf

BRMIMP_Figures.pdf

Fwd Carlsbad Energy Center BRMIMP for the CEMS concrete pad .rtf

NRG_BRMIMP_CEMS Concrete Pad Rev 2 06222011.docx

2011) Bryand Duke - Re_ Fwd_ Carlsbad Energy Center_ BRMIMP for the CEMS concrete pad .pdf

2011) Bryand Duke - RE_ Fwd_ Carlsbad Energy Center_ BRMIMP for the CEMS concrete pad.pdf

September 10, 2015

Rob Simpson
27126 Grandview Avenue
Hayward, CA 94542
rob@redwoodrob.com

RE: Public Records Act Request No. 15-09-352

Dear Mr. Simpson,

This letter is in response to the Public Records Act (PRA; Govt. Code, § 6250 et seq.) request you submitted (CDFW) on September 3, 2015.

The Department has conducted a diligent search of its records. Attached, please find copies of all documents. Information that has been redacted, and no documents have been withheld.

Should you have any questions regarding your request, please email PRACoordinator@wildlife.ca.gov

Sincerely,

Catherine Cobb
Associate Governmental Program Analyst
Department of Fish and Wildlife
1416 Ninth Street, Suite 1341
Sacramento, CA 95814

From: rob@redwoodrob.com [mailto:rob@redwoodrob.com]
Sent: Thursday, September 03, 2015 1:15 AM
To: Wildlife PRA Coordinator; Fluharty, Marilyn@Wildlife; Wong, Warren@Wildlife
Cc: Paznokas, William@Wildlife; Andrew Kingsdale; Sarveybob@aol.com
Subject: PUBLIC RECORDS REQUEST

To; The California Department of Fish and Wildlife.

Hello,

I am writing regarding the Carlsbad Energy Center amendment before the California Department of Fish and Wildlife. The CEC has a record of a short email from Warren Wong and Warren Wong in 2007 (attached) and another short email in 2014 (attached). The 2014 email may be because, the email address to Mr. Paznokas appears incomplete. I also have a record from 2007 at the address 4949 VIEWRIDGE AVENUE San Diego.

The CEC amended the project in what they called a "compliance proceeding" from a 6 stack less efficient single cycle plan to a larger 6 stack less efficient single cycle plan. The impacts on the Aquatic Resources, are exponentially higher. The toxic plumes will be emitting at 80 miles per hour to close the airspace in the area to airplanes because of the danger from the plumes. The potential hazards to avian species attempting to navigate the lagoon. The new project will be between 100-350 feet from the water. The record indicates that it will be between 100-350 feet from the water. The new project will have a 673 foot diameter which will be well into the protected habitat, particularly the lagoon. The project also includes a web of new high voltage wires and lights next to the habitat. The wires are much higher and in excess of the limits of the Carlsbad Habitat Management Plan.

The CEC has a host of notice requirements to CDFW that do not appear to have been met. Members Proposed Decision (PMPD) Section § 1749 of their rules state; "The project description and within 15 days distributed to interested agencies.." CDFW should have received at least one for the original proceeding in late March of 2012. The new proposed 2012 decision had a service list that did not include CDFW/G

Notably the CEC apparently sent "Solicitation For Agency Participation in the Revised Licensed Carlsbad Energy Center Project" in July of 2014, It wrongly states a number of components and alignments will not be modified from the licensed CECP." The solicitation was sent to the Department of Fish and Wildlife and is sent without a particular recipient to the local office. http://docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN202717_20140717T093934_Solicitation_For_Agency_Participation_in_the

PUBLIC RECORDS REQUEST

1. Please provide all records CDFW has of receiving the PMPD in 2012 or 2015 or other communications. The PMPD(S) would have been nearly 600 pages and nearly 350 respectively. They may have been on

above, discusses the Application but not the proposed decision(s).

2. I noticed that the 2014 attempt at communication appears focused on OTC issues. Please provide the communication in question.

3. What address should the CEC be sending information to CDFW regarding agency participation to whose attention should these communications be sent?

Please send the records electronically to this email address.

I have a Motion for Reconsideration before the CEC at this time and so time is of the essence. If the proceeding, I think that would be appropriate. Attached Please find a biological opinion from Dr. T.

Attachments	Size
<input type="checkbox"/>	ACECP_07-AFC-06C_Revised_Bio-6_BRMIMP_07162015.pdf
<input type="checkbox"/>	RE: Biological Resources MMP update.eml
<input type="checkbox"/>	BRMIMP_ApdxA Resumes.pdf
<input type="checkbox"/>	BRMIMP_Figures.pdf
<input type="checkbox"/>	Fwd Carlsbad Energy Center BRMIMP for the CEMS concrete pad .rtf
<input type="checkbox"/>	NRG_BRMMP_CEMS Concrete Pad Rev 2 06222011.docx
<input type="checkbox"/>	2011) Bryand Duke - Re Fwd Carlsbad Energy Center BRMIMP for the CEMS concrete pad .pdf
<input type="checkbox"/>	2011) Bryand Duke - RE Fwd Carlsbad Energy Center BRMIMP for the CEMS concrete pad.pdf