

## DOCKETED

<b>Docket Number:</b>	07-AFC-06C
<b>Project Title:</b>	Carlsbad Energy Center - Compliance
<b>TN #:</b>	206168
<b>Document Title:</b>	Hearing Adviser Proposed Order Denying Simpson Reconsideration Petition
<b>Description:</b>	N/A
<b>Filer:</b>	Paul Kramer
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Energy Commission
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<b>Docketed Date:</b>	9/22/2015



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

**PETITIONS TO AMEND THE  
CARLSBAD ENERGY CENTER PROJECT**

**Order No. \_\_\_\_\_  
Docket No. 07-AFC-06C**

**[HEARING OFFICE PROPOSED] ORDER DENYING ROBERT SIMPSON'S  
PETITION FOR RECONSIDERATION AND MOTION TO REOPEN THE  
EVIDENTIARY RECORD AND RESTORE MY INTERVENTION RIGHTS**

Upon consideration of Intervenor Robert Simpson's Petition for Reconsideration and Motion to Reopen the Evidentiary Record and Restore My Intervention Rights (Petition),<sup>1</sup> the California Energy Commission makes the following findings and conclusions:

**FINDINGS**

1. The petitions to amend the Carlsbad Energy Center Project were filed on April 29, 2014 and May 2, 2014.<sup>2</sup>
2. A committee of Commissioners Karen Douglas, Presiding Member, and Andrew McAllister, Associate Member, conducted evidentiary hearings on the amendment petitions on April 1 and April 2, 2015,<sup>3</sup> and issued its Presiding Member's Proposed Decision (PMPD) on June 9, 2015,<sup>4</sup> and an Errata to the PMPD on July 15, 2015.<sup>5</sup>
3. The PMPD and Errata were approved by the full Energy Commission at a hearing on July 30, 2015. A final Commission Decision approving the petitions to amend was docketed on August 3, 2015. By its terms, the Commission Decision was "adopted, issued, effective, and final" when it was docketed (filed).<sup>6</sup>
4. Pursuant to Public Resources Code Section 25530, a party to this proceeding may petition for reconsideration of the Commission Decision within 30 days of its adoption. The last day to file such a petition was September 2, 2015.
5. Mr. Simpson was granted intervenor (party) status in this proceeding on September 23, 2014.<sup>7</sup>

<sup>1</sup> TN 205986

<sup>2</sup> TNs 202267 and 202287-1 through 202287-3, respectively

<sup>3</sup> TNs 204130 and 204131

<sup>4</sup> TN 204953

<sup>5</sup> TN 205362

<sup>6</sup> TN 205625, p. 6 of the .pdf file, paragraph 4

<sup>7</sup> TN 203091

6. The Petition was filed on September 2, 2015.
7. The Petition was set for hearing before the Energy Commission on September 22, 2015.<sup>8</sup>
8. On September 16, 2015, responses to the Petition were filed by the project proponent,<sup>9</sup> Intervenor the Sierra Club,<sup>10</sup> and Energy Commission staff.<sup>11</sup> Petitioner Simpson filed his reply to those responses on September 18, 2015.<sup>12</sup>

## **DISCUSSION**

The issues Mr. Simpson raises are not new to this proceeding. Rather than describe new evidence that could not have been produced at the evidentiary hearings and its effect on a substantive element of the Commission Decision, he reargues issues that were previously presented and discussed during the evidentiary hearings, in comments on the PMPD, and to the full Energy Commission at the July 30, 2015 adoption hearing. The new information he identifies could have been produced during the evidentiary hearings; having failed to convince us of the efficacy of his positions, he seeks to have another opportunity to bring in additional evidence and argument. Absent some new and compelling reason for reopening and reconsidering the Commission Decision, not presented here, it is past time to end those debates.

The Petition's caption mentions a request that Mr. Simpson intervention rights be restored. The body of the petition does not mention the point. We understand it to be about the limitations on his rights to the topics of Air Quality, Greenhouse Gas emissions, and Public Health, imposed by the Committee when it granted his Petition to Intervene. That limitation was specifically made "subject to review upon Petitioner's further motion and a specific showing of a compelling interest in the other topic areas considered in this proceeding" and did not "Petitioner's right to make public comments separately from his role as an Intervenor."<sup>13</sup> Mr. Simpson initially appealed the limitations applied by the Committee to the full Commission, which denied his appeal.<sup>14</sup> Though reminded at several points during the proceeding of the ability to request an expansion of the scope of his intervention,<sup>15</sup> Mr. Simpson did not avail himself of those opportunities.

## **FURTHER FINDING**

9. The new evidence proffered by Mr. Simpson is largely in the nature of argument, speculation or conjecture rather than evidence. It is an attempt to reargue points previously raised in this proceeding by Mr. Simpson and others. To the extent that it constitutes actual evidence it was capable of being produced during the evidentiary

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<sup>8</sup> TNs 206058, 206100

<sup>9</sup> TN 206121

<sup>10</sup> TN 206122

<sup>11</sup> TN 206123

<sup>12</sup> TNs 206141, 206142

<sup>13</sup> TN 203091, p. 2

<sup>14</sup> TN 203282

<sup>15</sup> TNs 203377, 203560

hearings.

## CONCLUSIONS

1. The Petition was timely filed.
2. The Petition does not satisfy the requirements the Commission's regulation regarding Petitions for Reconsideration.<sup>16</sup> It does not "specifically set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law." It does not "fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision."
3. Petitioner Simpson is seeking to reopen and reargue issues that were addressed, or could have been addressed with the exercise of diligence, during the evidentiary hearings, the PMPD comment period, or during the Energy Commission's July 30, 2015, adoption hearing. The new evidence that he offers was available for him to offer during the evidentiary hearings.
4. The grounds for ordering reconsideration stated in the Petition are restatements and amplifications of issues and arguments previously raised in this proceeding or which could have with the exercise of diligence been raised prior to the Commission's July 30, 2015 approval of the PMPD and Errata. They do not justify ordering reconsideration. It is appropriate to deny the Petition.
5. The Petition does not give any cause for us to revisit or revise the findings and conclusions contained in the Commission Decision.

## ORDERS

1. The Petition, including the embedded motion, is **DENIED**.
2. This Order is adopted, issued, effective, and final on the date this Order is docketed.
3. Further Reconsideration of the Commission Decision is not permitted.
4. Judicial review of this Order is governed by Public Resources Code, section 25531.

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<sup>16</sup> Title 20, California Code of Regulations § 1720:

(a) Within 30 days after a decision or order is final, the Commission may on its own motion order, or any party may petition for, reconsideration thereof. A petition for reconsideration must specifically set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision. . .

## CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on September 22, 2015.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated: September 22, 2015, at Sacramento, California.

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Tiffani Winter  
Secretariat  
California Energy Commission