

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	206546
Document Title:	Hearing Officer Proposed Commission Order on Reconsideration of Commission Decision
Description:	Proposed order for consideration by the Energy Commission during its November 12, 2015 Business Meeting.
Filer:	Paul Kramer
Organization:	Energy Commission Hearing Office
Submitter Role:	Energy Commission
Submission Date:	11/9/2015 4:13:25 PM
Docketed Date:	11/9/2015



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**

Order No. _____
Docket No. 07-AFC-06C

**[HEARING OFFICER PROPOSED] COMMISSION ORDER ON
RECONSIDERATION OF COMMISSION DECISION APPROVING
PETITIONS TO AMEND THE CARLSBAD ENERGY CENTER PROJECT**

Following consideration of the comments of the California Department of Fish and Wildlife (CDFW) on the Presiding Member's Proposed Decision (PMPD) and Commission Decision approving the Petitions to Amend the Carlsbad Energy Center Project, the comments and arguments of parties and the public, 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, 2014.¹
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, 2015,² and issued its PMPD on June 9, 2015,³ and an Errata to the PMPD on July 15, 2015.⁴
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).⁵
4. Pursuant to Public Resources Code, section 25530, Robert Simpson filed a Petition for Reconsideration (Petition) of the Commission Decision on September 2, 2015.⁶
5. The Petition was heard by the Energy Commission on September 22, 2015.
6. The Energy Commission partially granted the Petition "for the sole purpose of allowing CDFW to review and comment on the PMPD docketed on June 9, 2015,

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

² TNs 204130 and 204131

³ TN 204953

⁴ TN 205362

⁵ TN 205625, p. 6 of the .pdf file, paragraph 4

⁶ TN 205986

and the Commission Decision docketed on August 3, 2015.” In all other respects the Petition was denied.⁷

7. Commission Staff provided copies of the PMPD and Commission Decision to CDFW on September 23, 2015.⁸
8. On October 19, 2015, CDFW provided comments in a letter to Chair Weisenmiller.⁹
9. On November 5, 2015, CDFW supplemented its comments.¹⁰
10. CDFW’s comments indicate that “revisions to the Presiding Member’s Proposed Decision and Final Staff Assessment are unnecessary.”¹¹ CDFW does not assert that significant environmental effects on avian species will occur from the construction or operation of the Carlsbad Energy Center project. The comments recognize a lack of ‘peer-reviewed’ information about the effects of thermal plumes on avian species and recommend that a study be conducted in conjunction with the Energy Commission and the United States Fish and Wildlife Service. That study could, but does not have to, involve the Carlsbad project. The study is proposed to gather more information to inform future project design and permitting, not as environmental mitigation.¹²
11. On November 12, 2015, the Energy Commission held a publicly noticed hearing during which comments from the parties and public were received.

CONCLUSIONS

1. CDFW’s comments do not identify any grounds that require supplementation of the previously-adopted environmental analysis.
2. Nothing in CDFW’s comments or the comments of the parties and public provides any cause to reopen or modify the Commission Decision.
3. The Commission therefore decides to make no changes or modifications to the Commission Decision.

ORDERS

1. The Commission Decision docketed on August 3, 2015 stands as previously docketed. The Commission Decision is not modified in any way by this Order.
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. The filing, consideration, and decision of the Petition for Reconsideration

⁷ TN 206182, Order ¶ 1

⁸ TNs 206175, 206176

⁹ TN 206420

¹⁰ TN 206514

¹¹ November 5 letter, TN 206514

¹² TNs 206420, 206514

does not toll or otherwise extend the limitations period for actions challenging the Commission Decision's adoption effective August 3, 2015, or any other Commission order or determination.

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 November 12, 2015.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated: November 12, 2015, at Sacramento, California.

Tiffani Winter
Secretariat
California Energy Commission