

DOCKET

08-AFC-10

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November 18, 2009

California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **NCPA OBJECTIONS TO PETITION TO INTERVENE BY
COALITION FOR FAIR EMPLOYMENT IN CONSTRUCTION
[CFEC] DOCKET NO. (08-AFC-10)**

Enclosed for filing with the California Energy Commission is the original of the **NCPA OBJECTIONS TO PETITION TO INTERVENE BY COALITION FOR FAIR EMPLOYMENT IN CONSTRUCTION [CFEC]**, for the Lodi Energy Center Docket No.(08-AFC-10).

Sincerely,



Marie Mills

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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission [CEC]

In the Matter of:

Application for Certification for the Lodi
Energy Center

DOCKET NO. 08-AFC-10

**NCPA OBJECTIONS TO PETITION
TO INTERVENE BY COALITION FOR
FAIR EMPLOYMENT IN
CONSTRUCTION [CFEC]**

The Northern California Power Agency (NCPA) hereby submits its Objections to the CFEC Petition for Intervention.

On or about November 16, 2009, NCPA received a document captioned as a Petition to Intervene, executed by Eric Christen (purportedly on behalf of the organization CFEC).

The specific Objections by NCPA to the granting CFEC intervener status are:

1. CEC regulation 1207(a) requires the petitioner (CFEC) to identify its position and interest in the proceeding.

As set forth in its petition at paragraph 3, CFEC is comprised of construction related employers and workers; some of which have worked on power plants. More specifically, CFEC designates its stake on this matter to be "concerns about the advancement and promotion of high standards of fair employment and fair competition in the construction industry...". The entire allegation, as it continues, is devoid of any reference to any matter under the jurisdiction of the CEC.

2. CEC regulation 1207(a) requires the petitioner to set forth the grounds for intervention.

CFEC has failed to identify any grounds to justify intervention. The closest implication to asserting some basis for grounds to intervene is found in paragraph 4. However, the mere assertion that it "affects...CFEC's members" has no basis in fact that is alleged by petitioner, except maybe as it relates to employment. As indicated

above, since the CEC has no jurisdiction, CFEC's purported grounds are irrelevant to these proceedings.

3. CEC regulation 1207(c) identifies the parameters for allowing intervention: "The presiding member may grant leave to intervene to any petitioner to the extent he (or she) deems reasonable and relevant". In this proceeding, the employment interests of CFEC are not relevant to siting/permitting a power plant.

Legal guidance by the California Supreme Court on the issue of reasonable and relevant intervention is invaluable. The purposes of intervention are to protect the interests of those who may be affected by the judgment. Voyce v. Superior Court (1942), 20 Cal.2d 479, 485). Allowing intervention is appropriate when granted to obviate delay and multiplicity of actions (Elms v. Elms (1935), 4 Cal.2d 681, 684 [102 A.L.R. 811]). However, intervention may be denied if these objectives are outweighed by the rights of the original parties to conduct their proceeding on their own terms. (See Willett v. Jordan(1934) 1 Cal.2d 461, 465.).

In its petition, CFEC gives no reason as to how the power plant certification might affect its members. The CEC does not condition the project upon, nor evaluate the union or non-union status of workers who may work on the project. If CFEC has an employment / contractual related claim against NCPA, then the appropriate forum was at the NCPA public hearing for approval of the labor agreement (which has already been concluded and attended by Eric Christen) or superior court, not the CEC. As a matter of public record, NCPA has expressly detailed on several occasions to the Committee that delay in this project is an extreme economic detriment to the public and public agencies involved in this project. The considerations of further delay associated with intervention, economic and public benefit loss if intervention is granted outweighs the personal non-CEC jurisdictional employment concerns of the CFEC and its members. Further to this, if CFEC has any relevant issues for consideration by the CEC, they are not precluded from public comment.

Conclusion

NCPA submits that CFEC has no interest in the outcome of granting or denying the AFC; its interest is economic as it relates to employment only. To that, the CEC has no authority and NCPA has already contracted for employment.

Accordingly, the CFEC petition should be denied with prejudice as not being relevant nor reasonable.

Respectfully submitted, November 18, 2009,

____Original Signed_____

Scott A. Galati
Counsel to NCPA



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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APPLICATION FOR CERTIFICATION
FOR THE *Lodi Energy Center*

Docket No. 08-AFC-10

PROOF OF SERVICE
(Revised 2/17/09)

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DECLARATION OF SERVICE

I, Robert A. Gladden, declare that on November 18, 2009, I served and filed copies of the attached **NCPA OBJECTIONS TO PETITION TO INTERVENE BY COALITION FOR FAIR EMPLOYMENT IN CONSTRUCTION [CFEC]** dated November 18, 2009. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[www.energy.ca.gov/sitingcases/lodi/index.html].

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-10
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.



Robert A. Gladden