

**Petition for Reconsideration of Energy  
Commission Decision**

**Kingdon Airport  
12145 N Devries Rd.  
Lodi, CA 95242  
209.595.1982**

<b>DOCKET</b>	
<b>08-AFC-10</b>	
DATE	<u>MAY 17 2010</u>
RECD.	<u>MAY 21 2010</u>

STATE OF CALIFORNIA  
State Energy Resources  
Conservation and Development Commission

In the Matter of:	)	Docket No. <b>08-AFC-10</b>
	)	
<b>Lodi Energy Center</b>	)	PETITION FOR
Power Plant Project	)	RECONSIDERATION OF
Lodi California	)	ENERGY COMMISSION -
_____	)	DECISION

**Kingdon Airport** hereby petitions for reconsideration of the Energy Commission's decision of the April 21, 2010, in the above-entitled matter.

This petition is made on the grounds that:

1. Failure to comply Warren Alquist Act
2. Failure to comply with CEQA guidelines and procedure
3. Incomplete environmental assessment (see attached)
4. Inaccurate environmental assessment (see attached)

5. Non compliance with Federal laws with respect to Federal Aviation Administration enforcement on neighboring airport (see attached)
6. Non disclosure by applicant (see attached)

5-17-10

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Date



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David Arnaiz  
Owner, Kingdon Airport

- ✓ Continuation pages attached
- ✓ Proof of service attached

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](http://WWW.ENERGY.CA.GOV)

**Petition for Reconsideration of  
Energy Commission Decision FOR THE  
Lodi Energy Center**

**DOCKET No. 08-AFC-10**

**PROOF OF SERVICE  
(Revised 2/8/10)**

Ken Speer  
Assistant General Manager  
Northern California  
Power Agency  
651 Commerce Drive  
Roseville, CA 95678  
[ken.speer@ncpagen.com](mailto:ken.speer@ncpagen.com)

**APPLICANT'S ENGINEER**  
Steven Blue  
Project Manager  
Worley Parsons  
2330 E. Bidwell, Ste. 150  
Folsom, CA 95630  
[Steven.Blue@WorleyParsons.com](mailto:Steven.Blue@WorleyParsons.com)

Melanie Moultry  
Staff Counsel  
[MMoultry@energy.state.ca.us](mailto:MMoultry@energy.state.ca.us)

**\*Jennifer Jennings**  
Public Adviser  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

Ed Warner  
Project Manager  
Northern California  
Power Agency  
P.O. Box 1478  
Lodi, CA 95241  
[ed.warner@ncpagen.com](mailto:ed.warner@ncpagen.com)

**INTERESTED AGENCIES**  
California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENORS**

**ENERGY COMMISSION**  
KAREN DOUGLAS  
Chairman and Presiding  
Member  
[kldougla@energy.state.ca.us](mailto:kldougla@energy.state.ca.us)

JEFFREY D. BYRON  
Commissioner and Associate  
Member  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

**APPLICANT'S COUNSEL**

Scott Galati  
Galati Blek  
455 Capitol Avenue, Ste. 350  
Sacramento, CA 95814  
[sgalati@gb-llp.com](mailto:sgalati@gb-llp.com)

Kenneth Celli  
Hearing Officer  
[kcelli@energy.state.ca.us](mailto:kcelli@energy.state.ca.us)

**APPLICANT'S CONSULTANT**

Andrea Grenier  
Grenier & Associates, Inc.  
1420 E. Roseville Pkwy,  
Ste. 140-377  
Roseville, CA 95661  
[andrea@agrenier.com](mailto:andrea@agrenier.com)

Kristy Chew, Adviser to  
Commissioner Byron  
[kchew@energy.state.ca.us](mailto:kchew@energy.state.ca.us)

Sarah Madams  
CH2MHILL  
2485 Natomas Park Drive,  
Ste. 600  
Sacramento, CA 95833  
[smadams@ch2m.com](mailto:smadams@ch2m.com)

Rod Jones  
Project Manager  
[rjones@energy.state.ca.us](mailto:rjones@energy.state.ca.us)

## DECLARATION OF SERVICE

I, David Arnaiz, declare that on May 18, 2010, I served and filed copies of the attached Petition for Reconsideration of Energy Commission Decision, dated April 21, 2010. 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: [<http://www.energy.ca.gov/sitingcases/lodi>].

The documents have 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**);

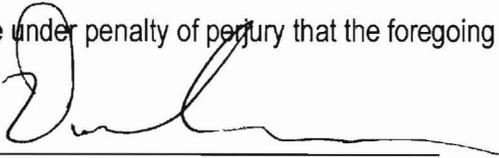
**OR**

- 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](mailto:docket@energy.state.ca.us)

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

  
\_\_\_\_\_  
David Arnaiz

May 14, 2010

State of California  
Energy Commission  
Rod Jones  
Project Manager  
rjones@energy.state.ca.us

Re: Final Decision of the Lodi Energy Center Power Plant Project  
CEC Docket No. 08-AFC-10

Dear Commissioners,

On April 21, 2010 you adopted the "Presiding Member's Proposed Decision" on the Lodi Energy Center Power Plant Project which was founded on inaccurate and incomplete information.

I am an owner of Kingdon Airport located within a concern-able distance of the power plant project and I have on several occasions brought to the attention of the project applicant (NCPA) the potentially devastating conflicts in land uses between our two properties/operations.

The applicant has and has had my personal cell phone number and email address of which we had preformed one hundred percent of our communications via these methods up and until the opportune time when these land use conflicts could have been brought forth into the project's environmental review. From that point forward I heard nothing from the applicant.

I did not get the opportunity to bring forth nor did you and your staff get the opportunity to hear and consider all the impacts that this project presents to its existing, neighboring airport operation.

I learned of the April 21, 2010 meeting (your final meeting) only by chance as on that day I was reading the morning news paper. I immediately called and I was provided the opportunity to speak at your April 21, 2010 meeting via phone and for that I thank your public advisor department; however I was informed by the commission that you were not meeting that day to hear evidentiary information. At that time I was requesting you to postpone you decision to allow time to hear evidence that failed to be disclosed by the applicant and considered in your approval process.

During my attempt at providing testimony at your April 21, 2010 meeting, to be sure that you and your staff were making your decision based on all the facts; the applicant

May 14, 2010

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Energy Commission  
Rod Jones  
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During my attempt at providing testimony at your April 21, 2010 meeting, to be sure that you and your staff were making your decision based on all the facts; the applicant

stated that to take time to listen to these fact now would be making a mockery of the time and effort they had spent on preparing this project for your approval.

I say facts are facts and during the environmental impact process; had the applicant disclosed all the impacts that their project imposes upon our airport of which we had made them aware of; these issues could have been resolved prior to your meeting of April 21, 2010.

I once heard that "wisdom seldom comes and just because it comes late is not a reason to ignore it"

I ask of you to please reconsider your decision of April 21, 2010, only long enough to learn of the inaccuracies and incompleteness of the environmental document of which you have thus far based your approval upon.

Please see below; points of contention, inaccuracies and incompleteness.

### **Basis of Contention No. 1**

Lack of notice resulting in exclusion in participation in the CEC environmental process. I was never invited to; nor ever participated in any of the CEC workshops or meetings other then the final meeting on April 21, 2010. My only involvement in the environmental impact issues related to the LEC project were meetings scheduled between the applicant (NCPA) an myself, of which were held at Kingdon Airport.

Many times throughout those early meetings with the applicant, I was informed by the applicant that there would be extensive environmental impact studies preformed as part of their approval process.

I left the above referenced meetings with the belief that per CEQA guidelines and policies, I would have been requested to comment on the compatibility or lack of compatibility of our aviation activities in relation to the newly proposed energy plant, I was not.

### **Basis of Contention No. 2**

The governmental agencies and their variation of authorities, who govern, approve or deny permissions to a project like that of the energy plant project vs. that of the permitted use and operation of the airport are not of unilateral authority.

Example:

While the FAA defers its authority over land use matters to local government (i.e. San Joaquin County, the Airport Land Use Commission, the city of Lodi etc.) they retain authority over the permitted use and operations of airports. This presents a procedural flaw with respect to the intention of the environmental review and approval process, i.e.

how can permission be granted for one use under one set of laws when doing so creates a violation of the laws governing an adjoining use. Thus the environmental review procedure must consider impacts of the laws from both sides of this equation.

By only considering the consistency of the land use plans and policies of local governmental agencies and in this case; only that of the FAA as it relates to constructing a 150 Ft. high obstacle within the FAR part 77 Imaginary Surface it leaves a substantial gap in compatible land uses and property rights issues between the two very different land uses and the governmental agencies who hold authorities over them.

Through the environmental review and the development of the environmental document that your April 21, 2010 approval was based on; the airport's rights (neither current nor future) to operate without impediment to its permitted use and operations with the existence of this full time, 250 mega watt, energy generating facility within the airports traffic pattern and the large natural gas pipeline running through its protected zones; were never presented, reviewed nor approved by the FAA.

Being that the FAA holds authority over the permit, the use and the rights to operate as an airport there exist the opportunity for the FAA to hold the airport accountable for the impacts of the LEC project as opposed to these newly created impacts being the responsibility of the imposing project. (See excerpts below)

Excerpts from the California Airport Land Use Planning Handbook by the State of California, Department of Transportation, Division of Aeronautics.

9-5

The FAA has no authority to remove or to prevent construction or growth of objects deemed to be obstructions. Local governments having jurisdiction over land use are typically responsible for establishing height limitation ordinances which prevent new, and enable removal of existing, obstructions to the FAR Part 77 surfaces.

9-5

The owner of an airport could be found in noncompliance with the conditions agreed to upon receipt of airport development or property acquisition grant funds and could become ineligible for future grants (or, in extreme cases, be required to repay part of a previous grant). Additional guidelines regarding protection of airport airspace are set forth in other FAA documents. In general, these criteria specify that no use of land or water anywhere within the boundaries encompassed by FAR Part 77 should be allowed if it could endanger or interfere with the landing, take off, or maneuvering of an aircraft at an airport (FAA-1987).

9-6

Also, under state laws, an airport's permit to operate could be restricted, suspended, or revoked because of objects deemed by the FAA to be hazards to air navigation.

The potential exist for the FAA to deem the existence of the LEC project within our traffic pattern as a hazard to flight operations and the natural gas pipeline in our protected zones as non-compliant (see below for more information on these potential impacts). These potential impacts must be alleviated by way of disclosure and consent, to and from the FAA (who governs the airport's use not the power plant's use) in order declare validity to this project's version of an environmental impact report which was used as a basis for the approval of the LEC facility.

### **Issues of contention, inaccuracies and incompleteness:**

The environmental document used to formulate the decision of approval to grant the licensing of the LEC project reflects incomplete and inaccurate information.

#### **Example 1:**

*Staff Assessment, Application for Certification (08-AFC-10), San Joaquin County Section 4.5-3 Natural gas and petroleum pipelines are prohibited uses within Runway Protection Zones.*

In the "Presiding Members Proposed Decision" this prohibit use is provided relief by way of an updated airport land use plan by the airport land use commission, however it has never been reviewed nor approved by the FAA. Thus this topic matter in the staff assessment is incomplete and leaves the burden of FAA compliance upon the airport owners (See excerpt below)

Excerpt from the California Airport Land Use Planning Handbook by the State of California, Department of Transportation, Division of Aeronautics.

9-5

#### **Runway Protection Zones**

Runway protection zones (RPZs) are trapezoidal-shaped areas located at ground level beyond each end of a runway. The dimensions of RPZs vary depending upon:

- The type of landing approach available at the airport (visual, nonprecision, or precision); and
- Characteristics of the critical aircraft operating at the airport (weight and approach speed).

Ideally, each runway protection zone should be entirely clear of all objects. The FAA's Airport Design advisory circular strongly recommends that airports own this property outright or, when this is impractical, to obtain easements sufficient to control the land use. Acquisition of this property is eligible for FAA grants (except at some small airports which are not part of the national airport system). Even on portions of the RPZs not under airport control, the FAA recommends that churches, schools, hospitals, office buildings, shopping centers, and other places of public assembly, as well as fuel storage facilities, be prohibited. Automobile parking is considered acceptable only on the outer edges of RPZs (outside the extended object free area).

Again the potential exist for the FAA to deem the existence of the LEC project's natural gas pipeline in our protected zones as hazardous or non-compliant and restrict our permitted uses and or our rights to apply for federal grant monies.

**Example 2:**

*Staff Assessment, Application for Certification (08-AFC-10), San Joaquin County Section 4.10-14 The existing flight pattern does not bring aircraft at low altitude over the project site.*

This statement is in accurate and misleading.

The published and nearly seventy year old established traffic pattern (flight pattern) at Kingdon Airport places aircraft directly over the energy plant site at an altitude of 800 ft AGL.

Where did the applicant determine that 800 ft AGL is not considered a low altitude? 800 ft AGL places aircraft only 650 ft above the outlet of the LEC exhaust stack which is emitting turbulence and who knows what other hazardous emission (when steaming waste water) that may be hazardous to aircraft. At this point we can say for sure that the FAA does not know.

**Example 3:**

*Staff Assessment, Application for Certification (08-AFC-10), San Joaquin County Section 4.10-17 Because of the projects distance from the nearest airport no impact on the Kingdon Airport airspace would occur.*

This statement is false, incomplete and misleading to the reader and in no way should any compatibility of land use decisions be based upon this misrepresentation of facts.

According to an FAA Safety Analysis conducted January 2006. The Safety Risk Assessment Team deemed the risk of over flight of exhaust plumes to be low or in the green section of the risk matrix, yet they still recommend the following:

1. Amend AIM with wording to the effect that over flight at less the 1000 feet above plume generation industrial sites should be avoided.
2. Publications in Airport Facility Directory and Notice to Airman filed as to the position and nature of power plants located near airport.
3. Where operationally feasible make temporary flight restriction that includes over flight of power plants a permanent flight restriction
4. Amend order 7400.2 to consider a plume generating facility as a hazard to navigation when expected flight paths pass less than 1000 feet above top of object. Flight Standard's Services will be required to provide comment for any facility not meeting this criterion.
5. Amend Advisory Circular 70/7460-2K Proposed Construction of Objects that May Affect the Navigable Airspace – Chang Instructions for Completing FAA Form 7460-1 – Notice of Proposed Construction or Alteration Item #21, adds:

“For structures such a power plants or any industrial facility where exhaust plume discharge could reasonably be expected and reportable under the provisions of Part 77, thoroughly explain the nature of the discharge”

Excerpt from the California Airport Land Use Planning Handbook by the State of California, Department of Transportation, Division of Aeronautics.

9-6

Additional guidelines regarding protection of airport airspace are set forth in other FAA documents. In general, these criteria specify that no use of land or water anywhere within the boundaries encompassed by FAR Part 77 should be allowed if it could endanger or interfere with the landing, take off, or maneuvering of an aircraft at an airport (FAA-1987). Specific characteristics to be avoided include:

-Creation of electrical interference with navigational signals or radio communication between the airport and aircraft;

- Lighting which is difficult to distinguish from airport lighting;

-Glare in the eyes of pilots using the airport;

-Smoke or other impairments to visibility in the airport vicinity; and

-Uses which attract birds and create bird strike hazards.

9-6 (intentionally repeated as it also applies in this example)

Also, under state laws, an airport's permit to operate could be restricted, suspended, or revoked because of objects deemed by the FAA to be hazards to air navigation.

9-9

In simple terms, risk can be defined as "the chance of injury, damage, or loss." More technically, risk is "the potential for realization of unwanted, adverse consequences to human life, health, property, or the environment" (Society for Risk Analysis). In mathematical terms, risk equals the probability of occurrence of an unwanted event times the adverse consequences. Risk can be considered as the inverse of safety; the latter being defined as "relative protection from adverse consequences." measurement or analysis is concerned with the question of what might happen.

Everyone of the items above are impacts on the airport as it relates to the FAA's jurisdiction and authority over our permitted use both current and future.

Specifically item No. 4 that the FAA Safety Analysis recommends speaks to the safe altitude topic discussed above and contradicts the statement in the staff assessment

And item No. 5 that the FAA Safety Analysis recommends speaks need to have the LEC project thoroughly explain the nature of their proposed discharge to the FAA.

If the applicant is not required to address and study these issues within their environmental report, then the burden is passed on to the airport. And this is a seriously adverse impact on the airport which makes the statement in section 4.10-17 of the Staff Assessment completely false.

### **Applicant's Response:**

When bringing the concerns list above to the attention of the applicant (NCPA) their response in the Technical Memorandum - prepared by CH2MHILL - April 6, 2009 was as follows:

Conclusion:

"If Mr. Arnaiz's concerns are not adequately addressed herein, he has several options available to him, any of which could be instituted with little effort and little impact to current operations or economic value of the Kingdon Airport"

- a. A NOTAM (notifying all pilots) could be issued warning pilots of the power plant and the possibility of turbulence.
- b. The airport could restrict use to a right-hand traffic pattern or a straight-in approach.
- c. Departing traffic could exit the traffic pattern before flying over the LEC site and arriving traffic could enter the pattern after the LEC site.
- d. Increase the altitude of our traffic pattern to over 1,000 feet.

This response is inaccurate, irresponsible and unacceptable. How can anyone conclude that the applicant's offerings (see bold/underlined items above) are not substantial impacts on the existing and future rights of Kingdon Airport?

In general, the conclusions drawn from the Safety Risk Analysis of Aircraft Over Flight of Industrial Exhaust Plumes and as offered as a remedy to Kingdon Airport by the applicant; points directly at and solidifies our concerns about the negative effects of the plume generating facility within our traffic pattern as it relates to the current and future operations of our airport as well as any plans for future expansion.

Also stated in the Technical Memorandum - prepared by CH2MHILL - April 6, 2009  
Table 2, page 11 - Method of avoidance at LEC:

"The CEC is currently preparing an analysis to determine if the plumbs will be located within the traffic pattern"

Was this analysis prepared? It was not found in the Staff Assessment. If it was prepared, dose it confirm that the exhaust plumes are directly in our traffic pattern?

Because of the inaccurate, misleading and incorrect information within the Staff Assessment (the project's environmental document) the contaminate information carried forth into the Presiding Members Proposed Decision document dated March 2010.

I respectfully request that the State of California Energy Commission re-consider their decision and allow all the facts to be brought forth and included in the Staff Assessment.

Sincerely,



David Arnaiz  
Owner, Kingdon Airport  
12145 N. Devries Rd.  
Lodi, CA 95242  
209.595.1982

cc:

Karen Douglas  
Chairman and Presiding Member  
kldougla@energy.state.ca.us

Jeffrey D. Byron  
Commissioner and Associate Member  
jbyron@energy.state.ca.us

Kenneth Celli  
Hearing Officer  
kcelli@energy.state.ca.us

Melanie Moultry  
Staff Counsel  
MMoultry@energy.state.ca.us

Elena Miller  
Public Adviser  
publicadviser@energy.state.ca.us

Mary Dyas  
Project Compliance Coordinator  
mdyas@energy.state.ca.us

San Joaquin Valley Air Pollution District  
sjvapcd@valleyair.org

Attorney General Edmund G. Brown, Jr.  
caag.state.ca.us

Governor Arnold Schwarzenegger  
gov.ca.gov

John Pfeifer  
John.Pfeifer@aopa.org

Andrew Wilson III  
andy\_psi@sbcglobal.net

Jewell Hargleroad  
jewelhargleroad@mac.com