

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

DOCKET	
08-AFC-3	
DATE	<u>JUN 10 2010</u>
RECD.	<u>JUN 10 2010</u>

In the Matter of:) Docket No. 08-AFC-3
)
Application for Certification for the) STAFF'S OPPOSITION TO PETITION
Marsh Landing Generating Station) FOR INTERVENTION
Project) ROBERT SARVEY
)
)

INTRODUCTION

On May 26, 2010, the Committee for the Marsh Landing Generating Station Application for Certification (AFC) proceeding issued a Notice of Prehearing Conference and Evidentiary Hearing, stating that the deadline to file a Petition to Intervene in this case was 5 p.m. on Monday, June 1, 2010. On June 4, 2010, Robert Sarvey filed a Petition for Intervention in the AFC proceeding. Staff respectfully requests the Committee deny Mr. Sarvey's petition because it is untimely and fails to show good cause for late intervention.

PETIONER MUST SHOW GOOD CAUSE FOR LATE INTERVENTION

California Code of Regulations, title 20, section 1207(c), states that the presiding member may grant "a petition to intervene filed after the deadline provided in subsection (b) only upon a showing of good cause by the petitioner." (Cal. Code Regs., title 20, §1207(c).) Mr. Sarvey has failed to make a showing of good cause as to why his petition was filed several days after the deadline and why he should be granted late intervention.

The AFC for the Marsh Landing Generating Station was filed over two years ago on May 31, 2008. Mr. Sarvey contends in his Petition that he only became aware of the deadline for formal intervention on June 4, 2010, because he was "awaiting the Final Staff Assessment and the FDOC and intended to evaluate both prior to applying for intervention." (Petition for Intervention for Robert Sarvey, p. 2.) In an e-mail response to Committee Questions, filed on June 8, 2010, however, Mr. Sarvey admits he checks the "CEC website about once a week." (Sarvey e-mail, Re: Committee Questions, 6-8-10, p. 1.)

Regarding Mr. Sarvey's claim that he was awaiting the Final Staff Assessment and FDOC, California Energy Commission (Energy Commission) Staff filed two status reports, one on February 17, 2010, and the second on April 15, 2010. Both status reports refer to Staff filing only a Staff Assessment for this project and contain no reference to a Preliminary or Final Staff Assessment. Staff published the Staff Assessment (SA) on April 26, 2010. The first page of the SA under "Executive Summary" states, "The SA serves as staff's official sworn testimony in evidentiary hearings" At the end of that section, the SA indicates that, following the receipt of the Final Determination of Compliance from the Bay Area Air Quality Management District, Staff might file revisions to the SA. (*Staff Assessment, Marsh Landing Generating Station*, April 26, 2010, pp. 1-1, 1-7.) Once again, there is no reference to the document being a Preliminary Staff Assessment or any indication that a Final Staff Assessment would be following.

Following the publication of the SA, Staff noticed and held a public workshop on May 4, 2010. Mr. Sarvey did not attend the workshop. Also, Staff provided a 30-day comment period on the SA, ending on May 26, 2010. Once again, Mr. Sarvey did not comment. The Committee held a Status Conference on May 12, 2010. Mr. Sarvey neither attended nor provided written comments.

However, Mr. Sarvey did provide extensive comments to the Air District on its Preliminary Determination of Compliance (PDOC) for Marsh Landing prior to the end of the comment period on April 30, 2010. The applicant provided a detailed response to the three sets of comments received by the Air District (including Mr. Sarvey's), which was docketed on June 4, 2010. Furthermore, although Mr. Sarvey did not file his comments on the project with the Energy Commission, his comments on the PDOC, as well as the applicant's responses, were reviewed and addressed as deemed necessary in the Revised Staff Assessment. Mr. Sarvey also claims in his petition to be providing testimony in other technical areas, Environmental Justice and Project Description; yet he provides no information as to whom he would be calling as an expert witness or the nature of the expert testimony. Mr. Sarvey had ample opportunity to provide Staff his comments on these topics over the past two years, but failed to do so.

MR. SARVEY WILL CONTINUE TO HAVE AMPLE OPPORTUNITY TO PARTICIPATE AND COMMENT AS A MEMBER OF THE PUBLIC

Mr. Sarvey is an experienced intervenor in the Energy Commission's siting process. Although Mr. Sarvey did not request to be on the Marsh Landing "Listserv" in order to receive electronic notices and publications in this proceeding, he is currently listed on six other electronic lists at the Energy Commission and, by his own admission, has participated in "about 20 siting cases." (*Sarvey e-mail*, 6-8-10, p. 1.) He is, therefore, aware of how to get his name and e-mail address on the Energy Commission's Listserv for any proceeding in which he plans to participate. Moreover, he stated that he checks the Energy Commission's website weekly. (*Sarvey e-mail*, 6-8-10, p. 1.) Even if he is not on the Marsh Landing Listserv, he should have noticed that over the past two years the Marsh Landing project was moving forward, a schedule had been issued setting the deadline for intervention, documents were published, workshops were noticed, a status conference was held, and an evidentiary hearing was scheduled.

Given his experience participating in siting cases, Mr. Sarvey has not made a showing of good cause as to why he should be granted late intervenor status in this case. Based on his active participation on the PDOC for Marsh Landing, it is clear that Mr. Sarvey knew that the Marsh Landing project was moving forward, but chose not to become actively involved in the Energy Commission's process until after the deadline had passed. He had ample opportunity to bring up his issues during the staff workshop or during the comment period for the SA, but he chose not to. Mr. Sarvey is one of the most experienced intervenors in the Energy Commission's siting cases. He is fully aware of how to receive timely notices and publications and how to check the website for details and deadlines on specific cases. Moreover, his extensive comments filed on the PDOC were received and addressed by Staff in the Revised Staff Assessment. He will continue to have ample opportunity for public comment before the Committee at the evidentiary hearing, as well as at hearings on the proposed decision before the Committee and full Commission. Thus, denying his late petition for intervention would not deny him the continued opportunity to participate and comment in this proceeding.

CONCLUSION

For the above reasons, Staff respectfully requests that the Committee deny Mr. Sarvey's untimely petition to intervene.

DATED: June 10, 2010

Respectfully submitted,

/s/ Kerry A. Willis
KERRY A. WILLIS
Senior Staff Counsel



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**APPLICATION FOR CERTIFICATION
FOR THE MARSH LANDING
GENERATING STATION**

Docket No. 08-AFC-3

**PROOF OF SERVICE
(Revised 5/26/2010)**

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DECLARATION OF SERVICE

I, Janet Preis, declare that on June 10, 2010, I served and filed copies of the attached Staff's Opposition to Petition for Intervention Robert Sarvey, dated June 10, 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/marshlanding/index.html].

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;

by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date 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-3

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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

/s/ Janet Preis _____