



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

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

DOCKET No. 08-AFC-3

COMMITTEE ORDER DENYING PETITION TO INTERVENE

Upon consideration of the Petition to Intervene filed by Petitioner Robert Sarvey (“Petitioner”), the Committee designated to conduct proceedings in this matter makes the following findings:

1. A Petition to Intervene, dated June 4, 2010, was filed in the above-captioned proceeding by:

Robert Sarvey
501 W. Grantline Rd
Tracy, CA 95376
(209) 835-7162 Voice
Sarveybob@aol.com

DOCKET	
08-AFC-3	
DATE	<u>JUN 21 2010</u>
RECD.	<u>JUN 21 2010</u>

2. Upon receiving the Petition, the Committee posed clarifying questions to Mr. Sarvey via e-mail. Mr. Sarvey responded to those questions also via e-mail on June 8, 2010 (Response).
3. The Petition, supplemented by the Response, contains the information required by section 1207 of the Commission’s regulations (Cal. Code Regs., tit. 20, § 1207);
4. Commission Staff and the Applicant filed objections to the Petition on the grounds that it was untimely and good cause for the late filing was not shown. Intervenor CURE made similar assertions in a June 10, 2010, e-mail to the parties;
5. Petitioner's interests are not relevant to the above-captioned proceeding;
6. The Petition is untimely in that it was filed after the deadline set forth in section 1207(b) -- no later than the Prehearing Conference or 30-days before the start of evidentiary hearings, whichever is earlier. That deadline was June 1, 2010; and

7. Petitioner has not shown good cause for allowing his late filed Petition. He participated in Bay Area Air Quality Management District and California Public Utilities Commission proceedings relating to the project. He could have petitioned to intervene at any point in this proceeding, which has been active since September, 2008. For unstated reasons, he attempted to wait until the last possible moment to file and missed the deadline. His explanation, that he was waiting for a Final Staff Assessment before deciding whether to intervene, fails in the light of the following statement in the April 2010 Staff Assessment (Executive Summary, p. 1-1, Introduction, pp. 2-2 – 2-3), and February 17 and April 15, 2010 Staff Status Reports 6 and 7. They indicated that a single Staff Assessment would be published, followed by a Staff Workshop, publication of any necessary revisions to the Staff Assessment, and then Committee proceedings. The Staff Assessment Introduction says

“Staff typically prepares both a preliminary and final staff assessment. However, to adhere to agreed upon timelines for this project, staff will prepare a SA only.”

Petitioner was on constructive notice that his assumption was incorrect.

THEREFORE, the Committee **ORDERS** that the Petition to Intervene in this matter be **DENIED**. Petitioner may, as a member of the public, present public comments prior to or during the evidentiary hearings but cannot present evidence, cross-examine witnesses, or exercise any other privilege available to formal parties in this proceeding.

By denying the Petition, we render moot, and do not decide, Mr. Sarvey’s companion Petition for Financial Hardship.

Dated June 21, 2010, at Sacramento, California.

Original signed by:

JAMES D. BOYD
Vice Chair and Presiding Member
Marsh Landing AFC Committee

Original signed by:

KAREN DOUGLAS
Commissioner and Associate Member
Marsh Landing AFC Committee



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FOR THE MARSH LANDING
GENERATING STATION**

Docket No. 08-AFC-3

**PROOF OF SERVICE
(Revised 6/21/2010)**

APPLICANT

Chuck Hicklin, Project Manager
Mirant Corporation
P.O. Box 192
Pittsburg, CA 94565
E-mail preferred
chuck.hicklin@mirant.com

Jonathan Sacks, Project Director
Steven Nickerson
Mirant Corporation
1155 Perimeter Center West
Atlanta, GA, 30338
E-mail preferred
jon.sacks@mirant.com
steve.nickerson@mirant.com

CONSULTANTS

*Anne Connell
Dale Shileikis
URS Corporation
Post Montgomery Center
One Montgomery Street, Suite 900
San Francisco, CA 94104-4538
E-mail preferred
Anne_Connell@URSCorp.com
Dale_shileikis@URSCorp.com

COUNSEL FOR APPLICANT

Lisa Cottle
Takako Morita
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5802
E-mail preferred
lcottle@winston.com
tmorita@winston.com

INTERESTED AGENCIES

California ISO
E-mail Preferred
e-recipient@caiso.com

INTERVENORS

California Unions for Reliable Energy
("CURE")
Gloria D. Smith & Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, California 94080
gsmith@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

ENERGY COMMISSION

JAMES D. BOYD
Vice Chair & Presiding Member
jboyd@energy.state.ca.us

KAREN DOUGLAS
Chair & Associate Member
kldougl@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Mike Monasmith
Project Manager
mmonasmi@energy.state.ca.us

Kerry Willis
Staff Counsel
kwillis@energy.state.ca.us

Jennifer Jennings
Public Adviser
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Maggie Read, declare that on June 21, 2010, I served and filed copies of the attached Committee Order Denying Petition to Intervene. 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

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, 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.

Original signed by:
Maggie Read
Hearing Adviser's Office