



**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 Sierra Club California (“Petitioner”), the Committee designated to conduct proceedings in this matter makes the following findings:

1. An undated Petition to Intervene was filed on June 29, 2010 in the above-captioned proceeding by:

**Sierra Club California
Robert Simpson
27126 Grandview Avenue
Hayward CA. 94542
(510) 909-1800 Voice
rob@redwoodrob.com**

DOCKET	
08-AFC-3	
DATE	<u>JUN 30 2010</u>
RECD.	<u>JUN 30 2010</u>

2. The Petition contains the information required by section 1207 of the Commission’s regulations (Cal. Code Regs., tit. 20, § 1207);
3. The Petition follows a similar petition filed by Robert Simpson in an individual capacity on June 21, 2010, and denied as untimely on June 28, 2010;
4. The Evidentiary Hearings on the project are scheduled on July 1, 2010, leaving insufficient time to allow the parties to consider and file responses to the Petition;
5. Petitioner's interests may or may not be relevant to the above-captioned proceeding. Petitioner alleges only a general energy policy concerns about the need for the project, greenhouse gas emissions, and impacts to low income and minority communities. It fails to describe the specific effects that this proposed project may have upon it or its members. Because we deny the petition on timeliness grounds, we need not resolve whether Petitioner’s interests are relevant;

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 was clearly stated in the May 26, 2010 Notice of Prehearing Conference and Evidentiary Hearing. The Petition was filed on June 29, 2010, a mere two days before the evidentiary hearings; and
7. Petitioner has not shown good cause for allowing its late filed Petition. It participated in California Public Utilities Commission proceedings relating to the project. It has participated in previous Energy Commission proceedings and knows or should know about our deadlines for participation as an intervenor. Petitioner could have petitioned to intervene at any point in this proceeding, which has been active since September 2008. Its assertion that it is entitled to wait until the filing of the Revised Staff Assessment (mischaracterized as a "draft environmental analysis" by Petitioner) before deciding to intervene is contrary to requirements of Section 1207(b). The Staff Assessment filed in April 2010 clearly indicated that it was the only Staff Assessment that would be published in this matter, subject to a possible supplementation. (April 2010 Staff Assessment, Executive Summary, p. 1-1, Introduction, pp. 2-2 – 2-3.) Similar intentions to publish a single, rather than draft and final, assessments were disclosed in the February 17 and April 15, 2010, Staff Status Reports 6 and 7.

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.

Dated June 30, 2010, at Sacramento, California.

Original signed by:

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

Original signed by:

KAREN DOUGLAS
Chairman and Associate Member
Marsh Landing AFC Committee



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Docket No. 08-AFC-3

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

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DECLARATION OF SERVICE

I, Maggie Read, declare that on June 30, 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