

**DOCKET**

**08-AFC-3**

DATE \_\_\_\_\_

RECD. JUN 21 2010

Robert Simpson  
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510-909-1800

State of California  
State Energy Resources Conservation and Development Commission

In the Matter of:	)	Docket # 08-AFC-3
	)	
Marsh Landing Generating	)	Petition for Intervention and
opening	)	Testimony of Rob Simpson
Station	)	
_____	)	

1. I submit this petition to Intervene and opening testimony in the Marsh landing  
Generating Station Docket # 08-AFC-3

2. I have participated in a number of Power plant proceeding before the CEC  
and other agencies/courts including;

Simpson v North Coast Unified Air Quality Management District/PG&E

Prevention of Significant Deterioration (PSD) permit appeal of the Humboldt Bay  
power project appeal No. 443-1 presently on appeal

Simpson v California Energy Commission (CEC) Ninth Circuit Court of  
Appeals Case No. 10-71396 appeal of CEC decision to fail to allow public  
participation and allow pollution, in violation of the Clean Air Act. I request the

the CEC take Official Notice of this presently pending proceeding as it addresses issues regarding public participation and the Clean Air Act that are germane to this proceeding.

Simpson v Deborah Bowen In her official Capacity as Secretary of State of California

in the Sacramento County Superior Court. Lawsuit regarding false and misleading ballot statements of Pacific Gas and Electric (PG&E) regarding Proposition 16. Lawsuit settled, no monetary compensation. Ballot initiative failed. PG&E spent nearly \$50 million (which could have been invested in cleaner energy) or about \$25 per vote and our campaign spent nearly \$100,000 or 5 cents per vote.

Russell City Energy Center (PSD) permit appeal 10-05. Before the Environmental Appeals Board of the USEPA presently pending appeal of pollution permit for 600 megawatt fossil fuel fired electrical generation source, planned to be located in the City of Hayward. It would be 5th highest polluter in the Bay Area. In 2008 I won a Federal decision which remanded the permit for a failure to allow for public participation EAD 08-01 that has, to Date blocked the development. The developer has reapplied and many groups and individuals are now involved. Oral arguments are scheduled on July 22, 2010 before the Environmental Appeals Board of the USEPA in Washington D.C..The EPA decision implicated the failed CEC Public participation system. I request the CEC

take official Notice of th remand as it appears to be germane to the failed public participation opportunity in this proceeding.

Simpson v San Diego Air Pollution Control District Appeal of Air pollution permit for Carlsbad Energy Center. Presently before the California Energy Commission

Simpson v Gateway Generating Station. I brought a series of appeals of a PG&E power plant in Contra Costa County, constructed in 2008, without necessary permits or pollution control equipment. The Department of Justice took jurisdiction and charged PG&E with violations of the Clean Air Act. It is presently pending as United Sates of America v Pacific Gas and Electric Civil Action No. 09-4503 SI I request that the CEC take official Notice of this proceeding the facility is, adjacent to this proposed facility, and indeed part of this application. The substantive issues of the litigation speak to the failed CEC process that allowed this facility to be constructed and operated in violation of the Clean Air Act.

Avenal Energy Center, Administrative actions before the USEPA, California Energy Commission and San Joaquin Air pollution Control District presently pending as Clean Air Act suit Avenal Power Center v USEPA Case 1:10-cv-00383-RJL. I request that the CEC take Official Notice of this proceeding as it is another example of a CEC license that did not adequately consider the constraints of the Clean Air Act and responsibility to allow public participation prior to licensing.

I participated as an, interested person, in this Marsh Landing proceeding through the Bay Area Air Quality Management District Preliminary Determination of Compliance (PDOC) process.

4. I have an interest in the proceeding because the California Environmental Quality Act (CEQA) states; **Chapter 1: Policy § 21000. LEGISLATIVE INTENT**(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment. (f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

I am a California Resident and U.S. Citizen. I am a member of the Sierra Club, Communities For a Better Environment (CBE), The Local Clean Energy Alliance (LCEA), Californians For Renewable Energy (CARE), Citizens Against Pollution (CAP), Hayward Area Planning Association (HAPA) and other organizations.

5. The Marsh Landing Facility has the potential to emit over 750,000 metric tons of MTCO<sub>2</sub>E/yr and significantly degrade the air quality in a highly affected low income community of color. I believe that the Marsh Landing Facility is not needed as further fossil fuel development is not necessary to ensure grid reliability and to meet the state's electrical demand. Recent information from the California Energy Commission as well as that forecast in the California Gas report demonstrates decreasing demand for electricity from natural gas power plants in the coming years. California's Renewable Portfolio Standard law

requires that all electrical suppliers procure at least 20% of electricity from renewable resources by 2010. A study conducted by the consulting firm 3E for the California Public Utilities Commission shows that in order to achieve this goal electrical suppliers need to phase-out fossil fuel power plants and increase renewable energy generation.

6. I understand that I should receive all relevant documents in this proceeding and that I will be responsible for supplying information and documents properly requested by other parties.

6. I certify that I have provided an electronic copy to the applicant's attorney of record and others on the official service list.

7. My cursory review of the CEC Staff's Revised Staff Assessment lead me to and believe staff's analysis is deficient in the areas of Air Quality (Greenhouse Gasses), Project Alternatives and impacts to low income and minority communities. My intervention is appropriate at this time because; No Document titled "Final Staff Assessment" has been published

**§ 1747. Final Staff Assessment.**

At least 14 days before the start of the evidentiary hearings pursuant to section 1748 or at such other time as required by the presiding member, the staff shall publish the reports required under sections 1742.5, 1743, and 1744 as the final staff assessment, and shall distribute the final staff assessment to interested agencies, parties, and to any person who requests a copy. (emphasis added)

When a Final Staff Assessment is published I am entitled to receive Notice Pursuant; § 1742.5. "Environmental Review; Staff Responsibilities.

(e) The staff shall distribute a notice of availability of the staff report to all interested persons." The record for this proceeding clearly indicates that I am an "interested person" Through my participation in that aspect of this proceeding known as the PDOC and my participation in other proceedings.

**§ 1744.5.(b)** "The local air pollution control officer shall conduct, for the commission's certification process, a determination of compliance review"

The Commissions has always allowed intervention up until the prehearing conference and in some cases later.

8. The CEC must as part of its due diligence in this proceeding seek input from the California Department of Justice (DOJ). The DOJ claims to have recovered 749.7 million from Mirant and stated "Mirant companies illegally acquired market power in the California wholesale energy markets in 1998 when they purchased power generation plants from SCE and PG&E, respectively, and that the illegality of those purchases was not manifest until the parties exercised their market power, starting in 2000, by withholding supplies from the market in order to drive up prices." It appears that Mirant subsequently transferred part of its facility (Contra Costa 8) to PG&E which is now known as the Gateway Generating Station, as part of a DOJ settlement. Apparently Marsh Landing or Contra Costa 9 is to replace Contra Costa 6-7 and Mirant seeks to excuse itself from compliance with the Prevention of Significant Deterioration (PSD) provisions of

the Clean Air Act as if Marsh Landing was not a part of the rest of the complex. The DOJ has clearly shown an interest in Mirant and this facility. The CEC should provide Notice to the DOJ of this proceeding. I request the the CEC take Official Notice of the DOJ action(s) against Mirant and its partner PG&E. All of these facilities are under the "common control" of PG&E as PG&E decides which will operate and when.

#### Discussion

I have reviewed the The COMMITTEE ORDER DENYING PETITION TO INTERVENE of Robert Sarvey. The CEC has failed its Public Notice and participation opportunity duties. No Notice from any agency has informed the public of the potential air quality effects of this project. No Notice has been provided to interested persons, such as myself. The CEC speaker cards (that are required to provide comment in hearings) do not even have a space for commenter's contact information so there is little chance that the CEC informed "interested persons" of actions after their comments. The publics first amendment rights to "petition the government for a redress of grievances" is violated by preventing informed public participation. In the event that the CEC refuses to consider my petition for a redress of my grievances, allowing intervention, continues to fail to provide Public Notice of its actions, including providing Notice to me of A "Final Staff Assessment" and continues to fail to include details of project(s) effects on air quality consistent with the National

Ambient Air Quality Standards and continues to violate the Clean Air Act in licensing polluters I intend to sue the CEC.

Instead of curing the failures identified in the above proceedings the CEC appears to have chosen to further underground its proceedings by changing its policy to eliminate the Preliminary Staff Assessment or Draft Environmental Impact Report and move straight to a Final Staff Assessment (albeit without identifying it as such) with inadequate Notice or opportunity for the public to comment. The Notice of "REVISED STAFF ASSESSMENT" was issued on June 21, 2010 the same day the Mr. Sarvey was denied intervention.

Next the CEC appears to intend to forgo the Air Districts Final Determination of Compliance and allow the applicant to stand in the shoes of the air district in replying to comments. Finally the CEC appears to intend to conduct the Prehearing Conference and hearing on the same day further preventing the public from petitioning to intervene until the prehearing conference as is customary.

I incorporate the testimony of Robert Sarvey and the Local Clean Energy Alliance including that of the Sierra Club in their entirety into this testimony as if they were my own. Also attached is a copy of my comments to the Bay Area Air Quality Management District in relationship to this proceeding hereby identified as Exhibit 701.

I hereby testify under the penalty of Perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

\_\_\_\_\_/\_\_\_\_\_

Robert Simpson

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – HU [WWW.ENERGY.CA.GOV](http://WWW.ENERGY.CA.GOV)UH**

**1B APPLICATION FOR CERTIFICATION Docket No. 08-AFC-3**

**FOR THE MARSH LANDING  
GENERATING STATION PROOF OF SERVICE**

*(Revised 6/21/2010)*

**APPLICANT**

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**INTERESTED AGENCIES**

California ISO

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### **INTERVENORS**

California Unions for Reliable Energy  
("CURE")

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### **DECLARATION OF SERVICE**

I, Rob Simpson declare that on June 21 , 2010, I served and filed copies of the attached (08-AFC-3) Petition for Intervention and testimony of Rob Simpson. 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:

[\[http://www.energy.ca.gov/sitingcases/marshlanding/Marshlanding\\_POS.pdf\]](http://www.energy.ca.gov/sitingcases/marshlanding/Marshlanding_POS.pdf). The document has been sent to 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:**

x   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. 09-AFC-4

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

       / \_\_\_\_\_  
Robert Simpson