

## DOCKETED

<b>Docket Number:</b>	11-AFC-03
<b>Project Title:</b>	Cogentrix Quail Brush Generation Project
<b>TN #:</b>	202379
<b>Document Title:</b>	Response: April 14, 2014 Order Granting Second Request to suspend Proceedings
<b>Description:</b>	MOTION AND PETITION FOR RECONSIDERATION
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<b>Organization:</b>	Helping Hand Tools (2HT)
<b>Submitter Role:</b>	Intervenor
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STATE OF CALIFORNIA  
State Energy Resources  
Conservation and Development Commission

In the Matter of;

QUAIL BRUSH GENERATION STATION

No. 11-AFC-03

**MOTION AND PETITION FOR RECONSIDERATION**

In response to the April 24, 2014, ORDER GRANTING APPLICANT'S SECOND REQUEST TO SUSPEND PROCEEDINGS AND DENYING INTERVENOR SIMPSON/HELPING HANDS TOOLS MOTIONS TO DENY AFC AND HOLD A HEARING IN THE AFFECTED COMMUNITY

Pursuant; 25530. Reconsideration of decision or order; motion; petition

The commission may order a reconsideration of all or part of a decision or order on its own motion or on petition of any party. Any such petition shall be filed within 30 days after adoption by the commission of a decision or order. The commission shall not order a reconsideration on its own motion more than 30 days after it has adopted a decision or order. The commission shall order or deny reconsideration on a petition therefor within 30 days after the petition is filed.

A decision or order may be reconsidered by the commission on the basis of all pertinent portions of the record together with such argument as the commission may permit, or the commission may hold a further hearing, after notice to all interested persons. A decision or

order of the commission on reconsideration shall have the same force and effect as an original order or decision.

1720. Reconsideration of Decision or Order.

(a) Within 30 days after a decision or order is final, the Commission may on its own motion order, or any party may petition for, reconsideration thereof. A petition for reconsideration must specifically set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision. In addition to being served on all parties as required by section 1210, the petition for reconsideration shall be filed with the chief counsel of the commission.

(b) The commission shall hold a hearing for the presentation of arguments on a petition for reconsideration and shall act to grant or deny the petition within 30 days of its filing. In the absence of an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition shall be denied.

(c) If the commission grants a petition for reconsideration, or if on its own motion it orders reconsideration, then within 90 days, or within a longer period set by the commission for good cause stated, the commission shall hold a subsequent hearing, which may include the taking of evidence, and shall decide whether to change the decision or order. In the absence of an affirmative vote of three members of the commission to change the decision or order, it shall stand.

(d) The commission may stay the effective date of all or part of a decision or order

pending reconsideration thereof. The commission shall specify the length of the stay, which shall expire no later than the end of the period for action upon reconsideration, as established in or pursuant to subdivision (c) of this section.

The Decision was based upon an error of law as clarified below, the Presiding Member did not have authority to deny my motion. The Presiding Member declined to conduct an evidentiary hearing so these matters could not have been considered. This has resulted in an unjust decision that prevents the project from being terminated or considered.

The presiding member seemed to make a case for denying the suspension, citing the applicant's argument that the project was needed; Applicant asserts that in light of the California Public Utilities Commission's (CPUC) recent issuance of D.14-03-004, authorizing San Diego Gas & Electric (SDG&E) to procure between 500 and 800 MW of generation by 2022 to meet local capacity needs in response to the permanent retirement of the San Onofre Nuclear Generating Station (SONGS), the project has ongoing viability. If the project is needed then the answer should have at least been to deny the suspension and continue work on the license. The Presiding Member gave no basis for the decision, merely concluding that; granting the request for suspension is the better choice.

The Presiding Member did not deny my contention that there is; no authority for a suspension. The Presiding Member cited no authority for the action taken. If a Decision is being made which conflicts with the law and will of the people, due process requires that some explanation of the basis and authority for the decision should be articulated.

The Presiding Member should have considered my motion in context of the applicable law. The motion is pursuant to 1720.2. Termination of NOI, AFC, and SPPE Proceedings.

(a) The committee or any party may, based upon the applicant's failure to pursue an application or notice with due diligence, file a motion to terminate the notice or application proceeding. Within 30 days of the filing of such a motion, the committee may

hold a hearing and provide an opportunity for all parties to comment on the motion.

Following the hearing, the committee shall issue an order granting or denying the motion.

(b) A committee order terminating a proceeding must be approved by the full commission.

While not expressly cited, it should have been clear from the basis of my motion that it was a motion to terminate under 1720.2. It is quite similar to my prior motion in which staff clarified for the commission the applicable law. In this order the Commission does not appear to have relied on a staff report. Pursuant 1720.3(b) the presiding member did not have authority to approve or conversely deny the motion. The Presiding Member seemed to erroneously believe that the only choice was to wait indefinitely for a decision; As for the requests for dismissal or denial of the AFC, and Simpson's motion to deny the AFC, a Committee decision on whether or not to recommend granting the project a license can only be based upon the evidentiary record to be developed at the Evidentiary Hearings, and those hearings cannot take place until Staff issues the Final Staff Assessment.

The Presiding Member erred in the determination that my motion was premature and in turn that my motion to hold a hearing before the affected community was moot.

The Committee should overturn the order, and terminate the proceeding before the affected community.

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