

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

DOCKET

09-AFC-3C

DATE May 16 2011

RECD. July 06 2011

In the Matter of:)
Application For Certification) Docket No. 09-AFC-3C
For the Mariposa Energy Project) **STAFF'S RESPONSE TO PETITIONS
FOR RECONSIDERATION**

I. INTRODUCTION

On June 17, 2011, Intervenors Rob Simpson and Robert Sarvey filed separate petitions for reconsideration of the Energy Commission's decision on May 18, 2011, to approve the Mariposa Energy Project. The Commission published a Notice and Order re: Petitions for Reconsideration on June 24, 2011, inviting parties in the proceeding to provide responses to the petitions by July 6, 2011. The Order states that "Responses shall be limited to discussion about whether the Petitions set forth new evidence that could not have been produced during evidentiary hearings on the case and/or any errors in fact or changes or errors of law pursuant to Cal. Code Regs., tit. 20, § 1720(a)." The following is the Energy Commission Staff's response.

II. ANALYSIS

As stated above, the Energy Commission's power plant siting process allows for parties to petition for reconsideration of a Commission's decision within 30 days of the final decision. In addition to setting forth new evidence and/or errors in fact or law, the regulations require that a 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." (Cal. Code Regs., tit. 20, § 1720(a).) Neither petition sets forth any new evidence or any errors of fact or law that were not considered during the Mariposa proceeding.

A. Rob Simpson's Petition for Reconsideration Raises No New Issues

Mr. Simpson's petition rehashes the same issues he and/or his attorney raised during the evidentiary hearings, the conference on the Presiding Member's Proposed Decision, and at the Commission's May 18th Business Meeting.

1. Mr. Simpson's Petition for Reconsideration of a Committee Order was Properly Denied.

The first issue raised by Mr. Simpson is in regards to Mr. Simpson's motion to have the Committee subpoena PG&E to attend the evidentiary hearings to discuss PG&E pipeline 002. Mr. Simpson raised his motion orally at the March 7, 2011, evidentiary hearings. The Committee took the motion under submission and subsequently, on March 28, 2011, in a 6-page ruling, denied the motion. On April 7, 2011, Mr. Simpson filed a petition for reconsideration of the Committee's ruling. California Code of Regulations, title 20, section 1215 outlines how interlocutory orders and appeals raised during a proceeding are handled. Subsection (c) provides as follows:

Unless the commission acts upon questions referred by the presiding member to the commission or upon a petition to review an order of the presiding member or committee within thirty (30) days after the referral or filing of the petition, whichever is later, such referrals or petitions shall be deemed to have been denied. The commission may act by formally denying the petition or by vacating or amending the committee order. (Cal. Code Regs., tit. 20, § 1215(c).)

During the May 18, 2011, Business Meeting in which the Commission considered the Application for Certification of the Mariposa Energy Project, Mr. Simpson's petition for reconsideration was discussed. In answer to a question from the Chairman regarding the status of Mr. Simpson's petition for reconsideration, Hearing Officer Celli responded:

A subsequent motion for reconsideration went to the Commission to reconsider the Committee's decision and that was sent up to Chief Counsel's office, pursuant to our procedures, and the determination I believe was that it was going to be denied by the expiration of time. (RT 5/18/11, p. 167.)

Even if Mr. Simpson is correct in arguing that the petition for reconsideration of a decision made by a committee in the course of a proceeding should be afforded a hearing under California Code of Regulations, title 20, section 1720, the petition was discussed at the Business Meeting and absent an affirmative vote of three members of the commission to grant the petition for reconsideration, the petition was denied.

2. Mr. Simpson fails to raise any new evidence regarding PG&E Pipeline, Line 002.

Mr. Simpson's second issue involves the same PG&E pipeline, Line 002. In his brief, Mr. Simpson states: "The written order does not sufficiently address pipeline safety and reliability." (Simpson Petition for Reconsideration, p. 5.) Staff is assuming that Mr. Simpson is referring to the Presiding Member's Proposed Decision or the Final Decision. The Final Decision addresses safety and reliability of the PG&E pipeline for seven pages, discussing the issues raised by Mr. Sarvey, the Staff and Applicant's witnesses' qualifications and testimony, and the definition of substantial evidence. (Commission Decision, Mariposa Energy Project, Hazardous Materials, pp. 2-9.) This issue was adjudicated on two separate days of evidentiary hearings and discussed at length during post-evidentiary hearings. Mr. Simpson fails to raise any new evidence that could not have been produced during evidentiary hearings on the case and/or any errors in fact or changes or errors of law.

3. Members of the Committee did not engage in prohibited ex-parte communications.

During the March 7, 2011 evidentiary hearings on the Mariposa Application for Certification, Mr. Simpson offered a motion requesting that the Committee subpoena PG&E to attend the evidentiary hearings to discuss Line 002. Scott Galati, PG&E's attorney, after listening to the hearing over the web, came into the hearing room and asked to speak to the Committee regarding the issuance of a PG&E subpoena, a procedural matter. Neither Mr. Galati nor PG&E are parties in the Mariposa proceeding and Mr. Galati did not discuss the substance of the safety issues regarding Line 002. Following a brief recess, Mr. Galati was invited by the Committee to speak on the record to report the conversation he had with the Committee regarding PG&E's intention to resist a subpoena to testify regarding the PG&E pipeline 002 after the first

point of interconnect if such subpoena was issued by the Committee in the Mariposa proceeding. This was based on the fact that PG&E was involved in several other safety hearings at that time. (RT 3/7/11, pp. 342-346.)

Government Code section 11430.20 states that:

A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

...(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy. (Govt. Code, §11430.20(b).)

The Committee correctly decided that the conversation with Mr. Galati was procedural in nature and the conversation was subsequently communicated on the record, therefore, there was no prohibited ex parte communication.

4. Mr. Simpson provides no new evidence that the project will not be in compliance with all Laws, Ordinances, Regulations and Standards (LORS.)

In his Petition for Reconsideration, Mr. Simpson raises the same issues he raised during and after the evidentiary hearings regarding a potential violation of a Williamson Act contract. The technical area of Land Use, including lengthy testimony specifically on the Williamson Act, was adjudicated for nearly an entire day of evidentiary hearings, which included direct testimony and cross-examination of representatives from the County of Alameda, the Applicant's witnesses and Staff's Land Use witnesses. Mr. Simpson, once again, fails to set forth any new evidence and/or errors in fact or law. Therefore, his Petition for Reconsideration should be denied.

B. Mr. Sarvey's Petition for Reconsideration attempts to re-adjudicate issues already considered by the Commission.

Mr. Sarvey's Petition for Reconsideration is a recitation of issues previously considered by the Committee and the Commission. He discusses the condition of Bruns Road which by his own admission was discussed at the May 18, 2011, Commission Business Meeting. In addition, he discusses school impact fees, project description, air quality, land use, and demographics. All of these topics were adjudicated during the three days and nights of evidentiary hearings. Therefore, Mr. Sarvey's Petition for Reconsideration does not meet the requirements of section 1720, and should be denied.



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 *MARIPOSA ENERGY PROJECT*
(MEP)**

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 5/16/2011)

APPLICANT

Bo Buchynsky
Diamond Generating Corporation
333 South Grand Avenue, #1570
Los Angeles, California 90071
b.buchynsky@dgc-us.com

Edward A. Mainland
Sierra Club California
1017 Bel Marin Keys Blvd.
Novato, CA 94949
emainland@comcast.net

Mr. Jass Singh
291 N. Altadena Street
Mountain House, California 95391
jass.singh2000@gmail.com

APPLICANT'S CONSULTANTS

Doug Urry
2485 Natomas Park Dr #600
Sacramento, CA 95833-2975
Doug.Urry@CH2M.com

Counsel for Rob Simpson
*April Rose Sommer
P.O. Box 6937
Moraga, CA 94570
AprilSommerLaw@yahoo.com

ENERGY COMMISSION

KAREN DOUGLAS
Commissioner and Presiding Member
KLdougl@energy.state.ca.us

COUNSEL FOR APPLICANT

Gregg Wheatland
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
glw@eslawfirm.com

Rob Simpson
27126 Grandview Avenue
Hayward CA. 94542
Rob@redwoodrob.com

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

INTERESTED AGENCIES

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

California Pilots Association
c/o Andy Wilson
31438 Greenbrier Lane
Hayward, CA 94544
andy_psi@sbcglobal.net

Galen Lemei
Advisor to Commissioner Douglas
E-Mail Service preferred
glemei@energy.state.ca.us

INTERVENORS

Mr. Robert Sarvey
501 W. Grantline Road
Tracy, California 95376
Sarveybob@aol.com

Rajesh Dighe
395 W. Conejo Avenue
Mountain House, California 95391
dighe.rajesh@gmail.com

Craig Hoffman
Siting Project Manager
choffman@energy.state.ca.us

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

Morgan K. Groover
Development Director
Mountain House Community
Services District
230 S. Sterling Drive, Suite 100
Mountain House, CA 95391
mgroover@sigov.org

Jennifer Jennings
Public Adviser
E-mail Service Preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Chester Hong, declare that on July 6, 2011, I served and filed copies of the California Energy Commission "Staff's Response to Petitions for Reconsideration", dated July 6, 2011. 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/mariposa/index.html>. 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; and
 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. 09-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.

/s/
CHESTER HONG