

## DOCKETED

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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
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**PETITION TO AMEND THE:**

**HUNTINGTON BEACH ENERGY PROJECT**

**Docket No. 12-AFC-02C**

## **STAFF OPPOSITION TO PETITION TO INTERVENE**

### **FILED BY ROB SIMPSON**

On June 27, 2012, AES Southland, LLC submitted an Application for Certification (AFC) to the California Energy Commission seeking permission to construct and operate a power generation facility, the Huntington Beach Energy Project (HBEP). After a lengthy review process, the final Commission Decision for the HBEP was filed on October 29, 2014. On September 15, 2015, the project owner filed a Petition to Amend the Final Commission Decision (PTA) for the HBEP. Following another lengthy review process, Energy Commission staff filed the Final Staff Assessment (FSA) Part 1 on October 17, 2016, and FSA Part 2 on December 9, 2016. On December 16, 2016, four and one-half years after the filing of original AFC and only three business days before the evidentiary hearing on the PTA, Rob Simpson<sup>1</sup> filed a Petition to Intervene (Petition). Staff requests that the Petition be denied because 1) it is untimely filed; 2) good cause to file a late petition has not been shown; and 3) the Petition fails on the merits.

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<sup>1</sup> Mr. Simpson's Petition notes that it is filed on behalf of "Helping Hand Tools" (2HT) and Mr. Simpson. Because Mr. Simpson is not a member of the California State Bar and therefore cannot provide legal representation to a third-party, and because all of the assertions and arguments on behalf of 2HT are submitted by Mr. Simpson himself, staff will refer to the instant Petition as Mr. Simpson's.

## **I. THE PETITION TO INTERVENE IS UNTIMELY**

Title 20, California Code of Regulations, section 1211.7(b) provides:

(b) A petition for intervention shall be filed no later than the deadline established by the presiding member, or if none is established, at least 30 days before the first evidentiary hearing in the proceeding. If the time period between notice of the first evidentiary hearing and the hearing is less than 30 days, the notice shall contain the deadline for intervention.

Mr. Simpson argues that his Petition is timely because it is filed before the second prehearing conference, scheduled for December 21, 2016. However, Mr. Simpson's assertion ignores the Committee's October 21, 2016 Order, which set the last day for filing a petition to intervene on October 31, 2016. Mr. Simpson's Petition is almost two months late, and thus the deadline to file a petition to intervene has passed.

## **II. GOOD CAUSE IS NOT SHOWN FOR THE LATE-FILED PETITION**

Mr. Simpson has not shown good cause to allow for a late-filed petition as allowed under Title 20, California Code of Regulations, section 1211.7(d), which provides in relevant part:

"The presiding member may grant late petitions only on a showing of good cause by the petitioner."

Mr. Simpson believes that he can show good cause by the following: Mr. Simpson states in his petition that he can "assist the process by voicing issues [he] has not seen raised" (Petition, TN 214868) in order to actively cultivate public participation; he has not had time to read all of the documents; and that

there are no other intervenors. However, to date Mr. Simpson has failed to participate in any way in either the original licensing proceeding or the instant PTA proceeding for the HBEP. Also, Mr. Simpson has had since June 24, 2016 to review the majority of staff's analysis contained in PSA Part 1, and provided comments on the South Coast Air Quality Management District's Preliminary Determination of Compliance, the very document that formed the basis for staff's Air Quality and Public Health analyses (as contained in PSA Part 2). And while there are no other intervenors whom have shown an interest in this PTA proceeding, there is no requirement that each proceeding before the Energy Commission have an intervenor participate at any stage of the proceeding. Here, the lateness of Mr. Simpson's petition is of his own making, and he should not be rewarded for his lack of diligence by being granted intervenor status at such a late stage of the proceeding.

### **III. THE PETITION TO INTERVENE FAILS ON THE MERITS**

Title 20, California Code of Regulations, section 1207 provides as follows:

(a) Any person may file with the Dockets Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceeding, and the name, address, and phone number of the petitioner.

Section 1207 is a permissive statute, one that allows any person to petition to intervene in any proceeding before the commission. Indeed, staff encourages participation by all other potential parties where such participation is reasonable and relevant, and will assist the Commission in creating a thorough and complete record for a project's environmental review. However, section 1207 does not automatically confer party status on a person who files a Petition to Intervene,

and any person who files such a Petition has the burden of justifying their intervention. Mr. Simpson simply has not provided such justification.

Historically, the Commission and staff both have actively encouraged public participation in our proceedings. Public participation is an integral part of the Commission's licensing proceedings, particularly for those members of the public who have a particular interest in some aspect of the project. Timely participation is also an absolute necessity in Energy Commission proceedings. In this matter, Mr. Simpson is seeking to intervene in order to be granted party status. However, Mr. Simpson has identified no particular interest in this matter that would justify his intervention, and a review of his petition shows that he has failed to support his request for intervention.

Mr. Simpson states as his sole ground for intervention that he wishes to "participate fully in all phases of these proceedings when public comment is asked for." (Petition, TN 214868) Mr. Simpson can certainly accomplish this by providing public comment in these proceedings at the appropriate time. There is nothing that would prevent Mr. Simpson from participating in this matter as a member of the public to ensure that he "actively participates and actively informs the affected community in order to increase civic participation and draw attention to important issues." However, his one stated ground for intervention is alone insufficient to grant him party status.

Staff also notes that Mr. Simpson's Petition does not set forth his position and interests in this matter, as required under Title 20, California Code of Regulations section 1207. And while Mr. Simpson has expressed "the extent to which the [he] desires to participate in the proceeding" as required under that section by indicating his intention to "participate fully in all phases of these proceedings *when public comment is asked for*" (Petition, TN 214868 [Emphasis added]), such participation "when public comment is asked for" does not first require intervenor status.

Moreover, the Committee is not obligated to grant a request for intervention. Title 20, California Code of Regulations, section 1207(c) provides as follows:

(c) The presiding member *may* grant leave to intervene to any petitioner *to the extent he [or she] deems reasonable and relevant*  
[Emphasis added]

Here, Mr. Simpson has failed to demonstrate the relevance of his request to be granted party status in this matter. More specifically, in addition to being untimely, in his Petition to Intervene he has also failed to specify which (if any) technical areas within which his participation would have some relevance. Based on his Petition to Intervene, it is difficult – if not impossible - to determine to what extent he should be allowed to participate as a party in these proceedings. Because of the insufficiency of his pleading, the Committee should not grant leave to intervene to any extent, and should deny his Petition.

#### **IV. CONCLUSION**

Public participation is an integral part of the Commission's licensing process, and Commission staff actively encourages members of the public to participate in our proceedings, to review the reports and studies that are produced as a part of the Commission's environmental review, and to provide comment on those documents. Comments offered by the public are an important part of the Commission's final decision, and help ensure that any potential environmental effects are fully mitigated to less than significant, and that the project complies with all laws, ordinances, regulations, and standards. While staff sees no legal reason to allow his request to be granted party status, despite Mr. Simpson's failure to provide comment in this matter thus far despite being given the opportunity to do so, staff continues to support Mr. Simpson's participation as a member of the public, and encourages him to provide comment in this proceeding. There is nothing in his late-filed Petition to Intervene, however, that

supports the granting of party status to Mr. Simpson. Based on the foregoing, the Petition to Intervene must be DENIED.

DATED: December 19, 2016

Respectfully submitted,

/s/ original signed by  
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