

## DOCKETED

<b>Docket Number:</b>	13-AFC-01
<b>Project Title:</b>	Alamitos Energy Center
<b>TN #:</b>	214480
<b>Document Title:</b>	Robert James Simpson Comments: NOTICE FEDERAL INJUNCTION TO STAY PROCEEDING
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	Robert James Simpson
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	11/14/2016 12:52:29 PM
<b>Docketed Date:</b>	11/14/2016

*Comment Received From: robert james simpson*

*Submitted On: 11/14/2016*

*Docket Number: 13-AFC-01*

## **NOTICE FEDERAL INJUNCTION TO STAY PROCEEDING**

To be filed today in Federal Court. TRO Hearing schedule to follow. CEC is hereby requested to stay proceeding pending resolution.

Rob Simpson

510-634-4171

*Additional submitted attachment is included below.*

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

### I. (a) PLAINTIFFS

Robert Simpson

(b) County of Residence of First Listed Plaintiff Alameda  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Pro Se  
27126 Granview Avenue  
Hayward, California, 95542 (510)643-4171

### DEFENDANTS

California Energy Commission, Janea Scott, Alana Mathews

County of Residence of First Listed Defendant Sacramento  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
IMMIGRATION				
<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions				

### V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S. Code Section 1983

Brief description of cause:

California Energy Commission, violated constitutional rights under the First and Fourteenth Amendments

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

### VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

11/14/2016

SIGNATURE OF ATTORNEY OF RECORD

### FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Name Robert Simpson  
Street Address 27126 Grandview Avenue  
City and County Hayward, Alameda County  
State and Zip Code California 94546  
Telephone Number (510) 634-4171

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT SIMPSON and HELPING HAND TOOLS

*(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)*

**-against-**

CALIFORNIA ENERGY COMMISSION, JANE A  
SCOTT (in capacity as CEC Commissioner, and  
ALANA MATHEWS (in capacity as CEC Public Advisor)

*(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)*

**Complaint and Request For  
Injunction**

Case No. \_\_\_\_\_  
*(to be filled in by the Clerk's Office)*

**I. The Parties to This Complaint**

**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>Robert Simpson, Executive Director Helping Hand Tools</u>
Street Address	<u>27126 Grandview Avenue</u>
City and County	<u>Hayward, Alameda County</u>
State and Zip Code	<u>California 94542</u>
Telephone Number	<u>(510) 634-4171</u>
E-mail Address	<u>rob@redwoodrod.com</u>

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	<u>California Energy and Resources Commission</u>
Job or Title (if known)	<u>Robert B. Weisenmiller, Chair</u>
Street Address	<u>1516 Ninth Street, MS-33</u>
City and County	<u>Sacramento</u>
State and Zip Code	<u>California 95814</u>
Telephone Number	<u>916-654-5036</u>
E-mail Address (if known)	<u>Catherine.Cross @ energy.ca.gov</u>

Defendant No. 2

Name	<u>Janea Scott</u>
Job or Title (if known)	<u>Commissioner, California Energy Commission</u>
Street Address	<u>1516 Ninth Street, MS-32</u>
City and County	<u>Sacramento</u>

State and Zip Code	<u>California 95814</u>
Telephone Number	<u>916-654-4930</u>
E-mail Address (if known)	<u>Rhetta.DeMesa @ energy.ca.gov</u>

Defendant No. 3

Name	<u>Alana Mathews</u>
Job or Title (if known)	<u>Public Advisor, California Energy Commission</u>
Street Address	<u>1516 Ninth Street, MS-12</u>
City and County	<u>Sacramento</u>
State and Zip Code	<u>California 95814</u>
Telephone Number	<u>800-822-6228</u>
E-mail Address (if known)	<u>publicadviser @ energy.ca.gov</u>

Defendant No. 4

Name	<u></u>
Job or Title (if known)	<u></u>
Street Address	<u></u>
City and County	<u></u>
State and Zip Code	<u></u>
Telephone Number	<u></u>
E-mail Address (if known)	<u></u>

**II. Basis for Jurisdiction**

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

Federal question

Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

**A. If the Basis for Jurisdiction Is a Federal Question**

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

42 U.S.C. § 1983. Warren-Alquist Act, California Pub. Res Code § 25531.

United States Constitution, 1st Amendment (no law abridging freed to petition

the government for a redress of grievances; 5th and 14th Amendments (due process).

**B. If the Basis for Jurisdiction Is Diversity of Citizenship**

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, *(name)* \_\_\_\_\_, is a citizen of the State of *(name)* \_\_\_\_\_.

b. If the plaintiff is a corporation

The plaintiff, *(name)* \_\_\_\_\_, is incorporated under the laws of the State of *(name)* \_\_\_\_\_, and has its principal place of business in the State of *(name)* \_\_\_\_\_.

*(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)*

2. The Defendant(s)

a. If the defendant is an individual

The defendant, *(name)* \_\_\_\_\_, is a citizen of the State of *(name)* \_\_\_\_\_. Or is a citizen of *(foreign nation)* \_\_\_\_\_.



b. If the defendant is a corporation

The defendant, *(name)* \_\_\_\_\_, is incorporated under the laws of the State of *(name)* \_\_\_\_\_, and has its principal place of business in the State of *(name)* \_\_\_\_\_. Or is incorporated under the laws of *(foreign nation)* \_\_\_\_\_, and has its principal place of business in *(name)* \_\_\_\_\_.

*(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)*

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

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### III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the injunction or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. Where did the events giving rise to your claim(s) occur?

At the California Energy Commission's Art Resenfeld Hearing Room,  
1516 9th Street, Sacramento, CA 95814.

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B. What date and approximate time did the events giving rise to your claim(s) occur?

The Energy Commission and Commissioners, acting under the unconstitutional Warren-Alquist Act, have regularly impeded my due process rights by infringing my right to redress grievances. Most recently, on June 8, 2016 at a Status Conference Meeting for the Alamos Energy Center AFC, the defendants infringed my due process rights by denying me the opportunity to comment on a decision to bifurcate evidentiary hearings.

C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

At the June 8, 2016 Status Conference Meeting, the agenda included a public comment period. I submitted a speaker card to speak on an agenda item that was not on the previously published agenda (a motion to stay proceedings at the air district). The hearing officer ruled on this motion before I had an opportunity to comment on it. When public comment was allowed AT THE END OF THE MEETING, I asked the hearing officer if I could speak on the decided issue. The hearing officer said, "no." My engineer, Bob Sarvey, is a witness. See my affidavit for more details. Because of the Warren-Alquist Act, I have no reasonably available venue to bring this grievance.

#### IV. Irreparable Injury

Explain why monetary damages at a later time would not adequately compensate you for the injuries you sustained, are sustaining, or will sustain as a result of the events described above, or why such compensation could not be measured.

The motion that was ruled on at the meeting was to bifurcate evidentiary hearings on the Alamos Energy Center Application for Certification. The first evidentiary hearing is scheduled to occur this Tuesday, November 15, 2016. If the hearings are bifurcated, it will substantially burden and hinder the public's ability to participate in the hearings, including small non-profit organizations like Helping Hand Tools because of the greater time and expense to travel to two sets of hearings. It would also be a burden on taxpayers to hold two sets of hearings.

#### V. Relief

State briefly and precisely what relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

The Court should enjoin the Energy Commission from bifurcating the evidentiary hearings on the Alamos Energy Center AFC. The evidentiary hearings should be stayed until the air district's analysis is ready during the week of November 21 (as the air district said during the status meeting).

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**VI. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk’s Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk’s Office may result in the dismissal of my case.

Date of signing: \_\_\_\_\_, 20\_\_.

Signature of Plaintiff \_\_\_\_\_

Printed Name of Plaintiff \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TEMPORARY RESTRAINING ORDER  
(TRO)  
CHECKLIST

**NOTE:** When filing a Motion for a TRO with the court, you must choose Motion for TRO. You must complete this document and attach it to your motion as an attachment in CM/ECF. If you have questions, please call the CM/ECF Help Desk at 1-866-884-5525 (Sacramento) or 1-866-884-5444 (Fresno).

- (A) *Check one.* Filing party is represented by counsel   
Filing party is acting in pro se

- (B) Has there been actual notice, or a sufficient showing of efforts to provide notice to the affected party?  
*See Local Rule 65-231 and FRCP 65(b).*

Did applicant discuss alternatives to a TRO hearing?

Did applicant ask opponent to stipulate to a TRO?

Opposing Party:

Telephone No.:

- (C) Has there been undue delay in bringing a TRO?

Could this have been brought earlier?

Yes:  No:

(D) What is the irreparable injury?

Why the need for an expedited hearing?

(E) Documents to be filed and (unless impossible) served on affected parties/counsel:

- (1) Complaint
- (2) Motion for TRO
- (3) Brief on all legal issues presented by the motion
- (4) Affidavit detailing notice, or efforts to effect notice, or showing why it should not be given
- (5) Affidavit in support of existence of irreparable harm
- (6) Proposed order with provision for bond
- (7) Proposed order with blanks for fixing:
  - Time and date of hearing for motion for preliminary injunction
  - Date for filing responsive papers
  - Amount of bond, if any
  - Date and hour of issuance
- (8) For TROs requested *ex parte*, proposed order shall notify affected parties they can apply to the court for modification/dissolution on 2 days notice or such shorter notice as the court may allow. See *Local Rule 65-231 and FRCP 65(b)*

1 Robert Simpson  
2 27126 Grandview Avenue  
3 Hayward, CA. 95542  
4 Phone: (510) 643-4171  
5 Email: rob@redwoodrob.com

6 *Pro Se*

7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 HELPING HAND TOOLS and ROBERT  
10 SIMPSON,

11 Plaintiff,

12 v.

13 CALIFORNIA ENERGY COMMISSION,  
14 JANEA SCOTT, in her capacity as  
15 Commissioner, and ALANA MATHEWS,  
16 in her capacity as Public Advisor,

17 Defendant.

No.

COMBINED MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

(Fed R Civ P 65(a), (b))

18 Plaintiff moves this court, pursuant to Rule 65 of the Federal Rules of Civil Procedure:

- 19
- 20 1. To issue a temporary restraining order on the CALIFORNIA ENERGY COMMISSION  
21 (“Energy Commission”) stopping further certification of the Alamos Energy Center, pending the  
22 hearing and determination on plaintiff’s request for a preliminary injunction.  
23
  - 24 2. To issue a preliminary injunction stopping further certification of the Alamos Energy Center,  
25 pending the final hearing and determination of this cause.

26 The grounds for this motion, as more fully set forth in the verified complaint and the annexed  
27 affidavits of Robert Simpson and, are that: 1. Robert Simpson was denied fair due process under  
28

1 the United State Constitution. 2. Unless enjoined, the Commission will continue the certification  
2 process that would infringe on plaintiffs constitutional rights. 3. The resolution of the hearing will  
3 cause immediate and irreparable injury to the plaintiff. 4. Unless the Energy Commission is  
4 restrained pending final disposition of the action, the injury to the plaintiff in the interim will be  
5 irreparable even by final judgement by the plaintiff. 5. No injury will be sustained by the  
6 defendant or by the public through issuance of a temporary injunction.  
7

8 This motion is based on the Motion papers, including this document, the attached Memorandum  
9 of Points and Authorities, the supporting Affidavit of Robert Simpson, and the verified  
10

11  
12  
13 Complaint and all other papers and records on file in this action, together with any argument and  
14 evidence that may be presented at the hearing of this motion.

15 Dated: \_\_\_\_\_  
16

17 Respectfully submitted,  
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1 Robert Simpson  
2 27126 Grandview Avenue  
3 Hayward, CA. 95542  
4 Phone: (510) 643-4171  
5 Email: rob@redwoodrob.com

6 *Pro Se*

7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 ROBERT SIMPSON,

10 Plaintiff,

11 v.

12 CALIFORNIA ENERGY COMMISSION,  
13 JANEA SCOTT, in her capacity as  
14 Commissioner, and ALANA MATHEWS,  
in her capacity as Public Advisor,

15 Defendant.

No.

**EX PARTE APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER  
TO ENJOIN DEFENDANTS FROM  
CONTINUING THE CERTIFICATION OF  
THE ALAMITOS ENERGY CENTER;  
MEMORANDUM IN SUPPORT**

16  
17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18  
19 **I. INTRODUCTION**

20 Plaintiff is a pro se litigant who is the Executive Director for Helping Hand Tools, a  
21 California registered 501(c)3 non-profit organization. He regularly participates in the  
22 CALIFORNIA ENERGY COMMISSION (“Energy Commissions”) proceedings for the  
23 protection of the environment and the promotion of social justice. This Memorandum of Points  
24 and Authorities offers the legal basis for why a TRO and Injunction should be issued against the  
25 Energy Commission. Plaintiff, in his complaint, alleges that the Energy Commission has violated  
26 numerous constitutional provisions and if the Energy Commissions proceedings on the Alamitos  
27 Energy Center are not halted, his rights will be further trampled.

28 **A. Federal Law Authorize the Relief Requested.**

1           “The purpose of a temporary restraining order is to preserve an existing situation in status  
2 quo until the court has an opportunity to pass upon the merits of the demand for a preliminary  
3 injunction.” (*Pan American World Airways, Inc. v. Flight Engineers' Int'l Assoc.* (2nd Cir.1962)  
4 306 F.2d 840. 842.) Federal Rules of Civil Procedure Rule 65(b)(1) permits a temporary  
5 restraining order to be granted ex parte if:

6           (A) Specific facts in an affidavit or a verified complaint clearly show that immediate and  
7 Irreparable injury, loss, or damage will result to the movant before the adverse party can  
8 be heard in opposition; and

9           (B) The movant's attorney certifies in writing any efforts made to give notice and the  
10 reasons why it should not be required.

11 A temporary restraining order is appropriate if there is proof of: (1) a likelihood of success on the  
12 merits; (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is  
13 denied; (3) the threat of injury outweighs any damage the injunction might cause defendant, and  
14 (4) the injunction will not disserve the public interest.

15           Plaintiff attached the required affidavit and verified complaint showing “immediate and  
16 irreparable injury”. Additionally plaintiff is Pro Se and attached his own certificate showing his  
17 efforts to give notice.

18           **B. Plaintiff Will Suffer a Great or Irreparable Injury Before This Matter Can be Heard on**  
19           **Notice Motion.**

20           Plaintiff will suffer an irreparable injury if the proceedings are allowed to continue. If the  
21 Energy Commission proceeds with a Bifurcated hearings without considering my comments on  
22 the bifurcation and motion of the Trust, the decision will be made without plaintiffs comments  
23 and it will be impossible to restore his rights. Plaintiff will be subjected to further action, expense  
24 and penalties if the Energy Commission proceeds illegally with hearings that could be overturned  
25 on procedural grounds, and that are based upon the preclusion of public participation.

26           **C. Plaintiff Will Succeed On the Merits of Her Case**

27           The Ninth Circuit Court of Appeals provides that only a reasonable probability of success  
28 is required to support a preliminary injunction. (*Gilder v. PGA Tour, Inc.* 936 F2d 417, 422 (9th

1 Cir. 21 1991.) In fact, a "fair chance on the merits" is sufficient for preliminary injunction  
2 purposes. (*See Johnson v. Cal State Fort of Accounting*, 72 F. 3d 1427, 1429 (9th Cir. 1995).) The  
3 trial court may give even inadmissible evidence some weight, when doing so serves the purpose  
4 of preventing irreparable harm before trial. (*See Flynt Distributing Co. Inc. v. Harvey*. 734 F.2d  
5 1389, 1394 (9th Cir. 1984).)

6 Plaintiff has a reasonable chance of success on the merits. First, the Plaintiff claims there  
7 was a procedural due process error. The Fourteenth Amendment of the United States  
8 Constitution states no state "shall . . . deprive any person of life, liberty, or property without due  
9 process of the laws." Plaintiff asserts that he has both a property and a liberty interest that was  
10 trampled by the Energy Commission. Plaintiff's property interest is found in two different ways:  
11 first, under the public trust doctrine the public at large has a property interest in all proceedings  
12 that would affect the public trust. *Illinois Central Railroad*, 146 U.S. 387(1892), stood for the  
13 proposition that the public trust is a right that works in conjunction with the U.S. Constitution  
14 and is grounded in federal common law. Although the public trust has been used primarily as a  
15 state tool, the Supreme Court held in *Illinois* that it a right that must be enforced by the Federal  
16 government. The second interest that the plaintiff has is a property interest, because he is entitled  
17 to comment on the proceedings as a member of the public. In *Goldberg v. Kelly*, 397 U.S. 254,  
18 the Supreme Court held that a state cannot deprive a welfare recipient of benefits without a pre-  
19 termination on the issue of eligibility, even though the recipient was entitled to a full hearing  
20 later in the course of the administrative appeals process." The court concluded that the Plaintiffs  
21 in *Goldberg* had a property interest in receiving Welfare because it was an entitlement from the  
22 government. Plaintiff asserts he has a similar entitlement to comment on the proceedings, the  
23 government has given him the right to public comment. Additionally the plaintiff has a liberty  
24 interest that has been denied. Plaintiff has the liberty to participate in the civic procedure and that  
25 liberty was denied when his comments were heard post decision.

26 Furthermore, the Court in *Goldberg* held that once a liberty or property interest is shown,  
27 the process must have minimum procedural safeguards. "In that case they were 1) adequate  
28 notice of termination and the reasons for it and 2) an effective opportunity to be heard. The latter

1 safeguard includes the right to have counsel present if desired, to cross-examine adverse  
2 witnesses, to have an impartial hearing examiner, and to receive a statement of the reasons for  
3 his decision.”

4 In this case, Plaintiff did not have the “minimum procedural safeguards” because he did  
5 not have a “right to be heard” until after a decision was made. This is an unconstitutional  
6 process, because the right to be heard is effectively destroyed if you can only comment *after* a  
7 proceeding. It is the equivalent of only allowing a plaintiff to cross examines a witness after the  
8 jury has already made its decision.

9 Secondly, plaintiff has lost his indivial right “to petition the government for a redress of  
10 grievances.” The Energy Commission is governed by the Warren Alquist act, which contains and  
11 unconstitutional circumvention of the process of law. Section 25531 of the act requires that all  
12 decision be appealing to the California Supreme Court, but the California Supreme Court  
13 routinely denies petitions. Meaning there is no opportunity to be heard and not appeals process.  
14 It is up the federal government to help enforce plaintiff’s constitutional right to be heard and be  
15 able to appeal these decisions to a body that will listen. Plaintiff has no readily available local  
16 remedies; the issue may be moot if the hearings proceed on Tuesday the 15<sup>th</sup> of November of this  
17 month at 12 noon. With the state court is purported precluded from considering CEC decisions  
18 and so the only possible remedy is a federal injunction.

19 **D. The Threatened Injury Outweighs any Damage That the Injunction Might Cause of the**  
20 **Defendants.**

21 An injunction that limits the hearing until Plaintiff present his evidence would neither  
22 damage nor cause any harm to the defendants. At most their procedure is slightly delayed, but in  
23 return the civic process is validated and the constitutional right to due process and to “to petition  
24 the government for a redress of grievances” is upheld.

25 **E. The Public Interest is Served by Allowing Plaintiff’s Claims to be Fully Heard.**

26 The public interest is served by allowing Plaintiff to continue with his suit. His suit is  
27 based upon the need for a fair and adequate hearing in the public process. It is based upon the  
28 fundamentals of the constitution.

1 **F. Plaintiff Should Not Be Required to Post a Security Bond as Defendant Would Suffer No**  
2 **or Little Injury Upon the Issuance of a Temporary Restraining Order.**

3        Though Federal Rules of Civil Procedure Rule 65(c) asks courts to require a security bond  
4 in conjunction with a temporary restraining order, courts are given wide discretion in the form  
5 bond may take. (*Continental Oil Co. v. Frontier Refining Co.*, (10th Cir. 1964) 338 F.2d 780.  
6 783.) In fact, in situations where the likelihood of harm to defendant is small, courts are not  
7 obliged to require a bond to be issued at all. *Id.* As is the case here, Plaintiff is asking for a period  
8 of time to be heard before the Energy Commission and the small delay that will occur does not  
9 require a bond. The application for certification of this power plant has been going on for years  
10 and a small delay will not damage anyone.

11 **II. CONCLUSION**

12        Plaintiff pleads this court to address this fundamental error in the California process.  
13 Without a TRO plaintiff will not have a chance to be heard and without an appeals process in the  
14 California court system, it is up to the Federal courts to enforce his constitutional rights.

1 Robert Simpson  
2 27126 Grandview Avenue  
3 Hayward, CA. 95542  
4 Phone: (510) 643-4171  
5 Email: rob@redwoodrob.com

6 *Pro Se*

7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 ROBERT SIMPSON,

10 Plaintiff,

11 v.

12 CALIFORNIA ENERGY COMMISSION,  
13 JANEA SCOTT, in her capacity as  
14 Commissioner, and ALANA MATHEWS,  
in her capacity as Public Advisor,

15 Defendants.

No.

**AFFIDAVIT REGARDING  
IRREPARABLE HARMS IN SUPPORT OF  
EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER**

16 I, ROBERT SIMPSON, declare:

17  
18 1. I am a plaintiff in this action and make this affidavit, pursuant to Fed. R. Civ. P. 65(b), in  
19 support of my *ex parte* application for issuance of a temporary restraining order. I have personal  
20 knowledge of the facts alleged in this affidavit.

21 2. This is an action for temporary restraining order and preliminary injunction for a 42 U.S.C  
22 § 1983 claim for deprivation of due process rights. I am requesting that the Court restrain the  
23 California Energy Commission (“CEC”) and defendants from conducting evidentiary hearings  
24 scheduled to begin on Tuesday, in a bifurcated manner, in the Alamos Energy Center  
25 Application for Certification (“AFC”) proceedings. I will suffer irreparable injury if the  
26 restraining order is not issued pending hearing on my motion for a preliminary injunction because  
27  
28

1 if the CEC proceeds with the Bifurcated hearings without considering my comments on the  
2 bifurcation and motion of the Los Cerritos Wetlands Land Trust, it will again succeed in violating  
3 the constitution, and it will be impossible to restore my right to participate in this AFC  
4 proceeding.

5  
6 3. This proceeding has constitutional basis on several fronts: first, the proposed power plant  
7 is in the coastal zone and all people have an inherent protected interest in that property under the  
8 public trust doctrine and derivative laws. Second, we consider the air to be within the public trust  
9 and essentially property that is owned by all and which we have a right to protect. Third it is well  
10 known to the commission that we regularly participate in proceedings as an integral aspect of our  
11 business. Undermining this participation limits our business and any economic benefits that may  
12 be associated with it. Fourth, my individual rights “to petition the government for a redress of  
13 grievances” has been undermined. We also have no readily available local remedies; the issue  
14 may be moot if the hearings proceed on Tuesday the 15<sup>th</sup> of November of this month at 12 noon.  
15 The state court is purported precluded from considering CEC decisions and so the only possible  
16 remedy is a federal injunction.  
17

18 4. If the CEC proceeds with the Bifurcated hearings without considering my comments on  
19 the bifurcation and motion of the Trust, the CEC will also be subject to further action, expense  
20 and penalties for proceeding illegally with hearings that could be overturned on procedural  
21 grounds, and that are based upon the preclusion of public participation. I am posting a copy of  
22 this action on the docket for this proceeding and giving the CEC an opportunity to reschedule the  
23 hearings on its own. Although I feel that it is important to post this as a notice, I am concerned  
24 that rational readers may assume that the CEC will simply reschedule the hearing and not attend  
25 on the 15<sup>th</sup>. This could further reduce public participation if the CEC proceeds in the absence of a  
26 rational basis.  
27  
28

1           5. I am the Executive Director for Helping Hand Tools, a California registered 501(c)3 non-  
2 profit organization. We regularly participate in California Energy Commission (CEC) and other  
3 proceedings for protection of the environment and promotion of social justice. The CEC regularly  
4 violates due process, the US constitution and other laws but recourse is unavailable in California.  
5 The CEC is governed by the Warren Alquist Act. This Act has created an unconstitutional  
6 circumvention of the process of law. In a section titled “Judicial review,” the Act states in  
7 relevant part; “(a) The decisions of the commission on any application for certification of a site  
8 and related facility are subject to judicial review by the Supreme Court of California. . . . (c)  
9 Subject to the right of judicial review of decisions of the commission, no court in this state has  
10 jurisdiction to hear or determine any case or controversy concerning any matter which was, or  
11 could have been, determined in a proceeding before the commission, or to stop or delay the  
12 construction or operation of any thermal power plant except to enforce compliance with the  
13 provisions of a decision of the commission.” Cal. Public Resources Code §25531.  
14

15  
16           6. The California Supreme Court routinely denies review of CEC actions and so no legal  
17 recourse is available in California, particularly no recourse that can cure the violations alleged in  
18 this case in a timely fashion. Failure to timely resolve the violations will eviscerate any recourse  
19 that I had in this matter.  
20

21           7. Regarding the specific meeting at issue here, the November 9, 2016 Alamitos Prehearing  
22 Conference, last week at great expense I scheduled time with my Engineer and travelled across  
23 the state of California to Sacramento to participate in this Conference. Upon arrival, prior to  
24 commencement of the hearing the Hearing officer Kenneth Celli and others recognized us and  
25 greeted us. The hearing officer gave me copies of the exhibits on my memory stick. The hearing  
26 commenced then the CEC public advisor, Alana Mathews arrived. I submit a speaker’s card to  
27 her and informed her that I wished to speak on the issues that were being discussed. She delivered  
28



1 the card to the hearing officer and had a short conversation with him and the presiding  
2 Commissioner, Janea Scott, then returned to her set without further comment to me. I asked for a  
3 copy of the agenda, but there were none there so the public advisor left and returned with a copy  
4 of the agenda for me. It had an item on the agenda that was not on the published agenda and was  
5 germane to the issue that I wished to speak to; a motion from one of the interveners to stay the  
6 proceeding until the air district has issued its determination. The hearing officer ruled on the  
7 motion. In fact, all issues on the agenda were decided without an opportunity for me to speak.  
8 Public comment was the last item on the agenda after all issues had been decided.

9  
10 8. When my opportunity to comment arose. I stated my name and position for the record and  
11 pointed out that we had submit comments to the air district. Our comments to the air district  
12 delayed the air districts determination and therefore had an effect on the Energy commission's  
13 related schedule and so was the subject of all items on the agenda. I asked the hearing officer if I  
14 could speak to the decided issues, specifically I asked to speak to the bifurcation and motion. I  
15 pointed out the above and clarified that he had also stated that they would not be revisiting issues  
16 that they had already decided. He stated "no" I could not speak to the issue and so I resumed my  
17 seat.  
18

19 9. The added agenda item was 3. Hearing on any pending motions. Attached is the published  
20 agenda and the one handed to me at the hearing.  
21

22 10. An intervenor (Los Cerritos Wetlands Land Trust) motion to stay the proceedings pending  
23 completion of the air pollution report was heard. It concludes: "The Trust believes that the  
24 issuance of the FSA (Final Staff Analysis) without Air Quality analysis is procedurally flawed  
25 and prejudicial to its and the public's interests, and urges the Commission, at the very least, to  
26 stay these proceedings until Air Quality analysis is included in the FSA."  
27

28 11. The air district was on the telephone line earlier and stated that their analysis would be

1 ready during the week of the 21<sup>st</sup> of November. The air district had been delayed by the one  
2 comment letter that they received from us. The commission had decided to bifurcate the  
3 proceeding hearing all matters except air quality, the intervener motion stated: “Air Quality  
4 impacts of this projects cannot be analyzed in a vacuum as air quality emissions impact most all  
5 other subject areas of concern.”  
6

7 I declare under penalty of perjury under the laws of the United States that the foregoing is  
8 true and accurate to the best of my knowledge. Executed in \_\_\_\_\_, California on  
9 this date, the \_\_\_\_ day of November, 2016.  
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14 Robert Simpson  
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1 Robert Simpson  
2 27126 Grandview Avenue  
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6 *Pro Se*

7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 ROBERT SIMPSON,

10 Plaintiff,

11 v.

12 CALIFORNIA ENERGY COMMISSION,  
13 JANEA SCOTT, in her capacity as  
14 Commissioner, and ALANA MATHEWS,  
in her capacity as Public Advisor,

15 Defendants.

No.

**AFFIDAVIT REGARDING NOTICE TO  
DEFENDANTS IN SUPPORT OF *EX*  
PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER**

16 I, ROBERT SIMPSON, declare:

17  
18 1. I am a plaintiff in this action and make this affidavit, pursuant to Fed. R. Civ. P. 65(b), in  
19 support of my *ex parte* application for issuance of a temporary restraining order. I have personal  
20 knowledge of the facts alleged in this affidavit.

21 2. This is an action for temporary restraining order and preliminary injunction for a 42 U.S.C  
22 § 1983 claim for deprivation of due process rights. I am requesting that the Court restrain the  
23 California Energy Commission and defendant from conducting evidentiary hearings scheduled to  
24 begin on Tuesday, in a bifurcated manner, in the Alamos Energy Center Application for  
25 Certification (AFC) proceedings.  
26

27 3. The decision to bifurcate the evidentiary hearings was last week during the Commission's  
28

1 November 9, 2016 Prehearing Conference in Sacramento. At this meeting I was denied an  
2 opportunity to comment on this decision before and after it was made.

3 4. On Monday, November 14, 2016, I will notify the Energy Commission and defendants of  
4 this application for TRO in the following ways: 1) I will docket my complaint and motion for  
5 TRO on the Energy Commission's docket log for the Alamos Energy Center AFC  
6 (<http://www.energy.ca.gov/sitingcases/alamos/>); 2) I will email staff for Energy Commission  
7 Chair Robert B. Weisenmiller, Commissioner Janea Scott, and Public Advisor Alana Mathews;  
8 and 3) I will call the offices of Energy Commission Chair Robert B. Weisenmiller, Commissioner  
9 Janea Scott, and Public Advisor Alana Mathews.  
10

11 I declare under penalty of perjury under the laws of the United States that the foregoing is  
12 true and accurate to the best of my knowledge. Executed in \_\_\_\_\_, California on  
13 this date, the \_\_\_\_ day of November, 2016.  
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18 Robert Simpson  
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6 *Pro Se*

7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 ROBERT SIMPSON,

10 Plaintiff,

11 v.

12 CALIFORNIA ENERGY COMMISSION,  
13 JANEA SCOTT, in her capacity as  
14 Commissioner, and ALANA MATHEWS,  
in her capacity as Public Advisor,

15 Defendants.

No.

**AFFIDAVIT OF BOB SARVEY IN  
SUPPORT OF ROBERT SIMPSON'S EX  
PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER**

16 I, BOB SARVERY, declare:

- 17
- 18 1. I have personal knowledge of the facts alleged in this affidavit.
  - 19 2. I accompanied Robert Simpson to the prehearing Conference for the Alamos Energy  
20 Center. I saw Mr. Simpson speak to the public advisor and submit a blue speaker's card to her  
21 early in the proceeding. I saw the public advisor deliver the blue card to the Hearing officer. We  
22 then sat while the agenda items were decided. After all other agenda items were decided the  
23 hearing officer allowed Mr. Simpson the opportunity to speak. Mr. Simpson asked the hearing  
24 officer if he could comment on the decided items and the Hearing officer told him no. Mr.  
25 Simpson did not comment on the items.

26 I declare under penalty of perjury under the laws of the United States that the foregoing is  
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true and accurate to the best of my knowledge. Executed in \_\_\_\_\_, California  
on this date, the \_\_\_\_ day of November, 2016.

\_\_\_\_\_

Bob Sarvey

## DOCKETED

<b>Docket Number:</b>	13-AFC-01
<b>Project Title:</b>	Alamitos Energy Center
<b>TN #:</b>	214014
<b>Document Title:</b>	Notice of Prehearing Conference and Evidentiary Hearing, Part 1
<b>Description:</b>	This document Notices the 11/9/16 Prehearing Conference and the 11/15/16 Evidentiary Hearing on the subject areas covered in the Final Staff Assessment, Part 1. The Notice also contains a new schedule which supersedes all prior schedules.
<b>Filer:</b>	Ken Celli
<b>Organization:</b>	Energy Commission Hearing Office
<b>Submitter Role:</b>	Committee
<b>Submission Date:</b>	10/14/2016 2:53:25 PM
<b>Docketed Date:</b>	10/14/2016



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  
ALAMITOS ENERGY CENTER*

Docket No. 13-AFC-01

**NOTICE OF PREHEARING CONFERENCE AND EVIDENTIARY  
HEARING, SCHEDULING ORDER, AND FURTHER ORDERS**

**PLEASE TAKE NOTICE** that the Energy Commission Committee assigned to conduct proceedings on the Application for Certification (Application) for the Alamos Energy Center (AEC) has scheduled a Prehearing Conference and Evidentiary Hearing as follows:

The **PREHEARING CONFERENCE** will be conducted on:

**WEDNESDAY, NOVEMBER 9, 2016**  
Beginning at 3:00 p.m.

**California Energy Commission**  
**Art Rosenfeld Room – Hearing Room A**  
**1516 Ninth Street**  
**Sacramento, CA 95814**  
**(See map below)**

The **EVIDENTIARY HEARING** will take place on:

**TUESDAY, NOVEMBER 15, 2016**  
**Evidentiary Hearing Begins at noon, 12:00 p.m.**  
**Public Comment Period Begins at 3:00 p.m.**

**The Grand Event Center**  
**Catalina Room**  
**4101 E. Willow Street**  
**Long Beach CA 90815**  
**(See map below)**

**TELECONFERENCE OPTION:** You may participate in the Prehearing Conference and Evidentiary Hearing either in person, by telephone, and/or by computer via the “WebEx” conferencing system. Please see the **"INSTRUCTIONS FOR USING WEBEX**



**TELECONFERENCING USING YOUR COMPUTER AND/OR TELEPHONE"** section attached to this notice.

**SCHEDULING ORDER**

**PLEASE TAKE NOTICE** that the Committee has established the following schedule for the AEC Application which **supersedes** all prior schedules:

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
Last Day to File Petition to Intervene	6/3/16 <sup>1</sup>
Final Staff Assessment (FSA) Part 1 <sup>2</sup>	9/23/16
All Parties File Opening Testimony on FSA, Part 1	10/19/16
All Parties File Rebuttal Testimony <sup>3</sup> on FSA Part 1	10/26/16
All Parties File Prehearing Conference Statements and Exhibit Lists Part 1	11/2/16
Prehearing Conference Part 1	11/9/16
Evidentiary Hearing (EH) on FSA Part 1	11/15/16
Final Staff Assessment Part 2	2 weeks from FDOC
All Parties File Opening Testimony Part 2	TBD <sup>4</sup>
All Parties File Rebuttal Testimony Part 2	TBD
All Parties File Prehearing Conference Statements and Exhibit Lists Part 2	TBD
Prehearing Conference Part 2	TBD
Evidentiary Hearing (EH) on FSA Part 2	TBD
Presiding Members Proposed Decision (PMPD) Published	TBD
Committee Conference on PMPD	TBD
Close of public comment period on PMPD	TBD
Errata/Revisions to PMPD	TBD
Final Adoption Hearing by the California Energy Commission	TBD

<sup>1</sup> See the Revised Scheduling Order TN 213403, filed 8/31/16.

<sup>2</sup> This Schedule applies to the FSA Part 1. A separate Notice and schedule will be issued after the FSA Part 2 is published.

<sup>3</sup> Rebuttal testimony is in response to an issue first raised in opening testimony. Testimony which could have, with reasonable diligence, been filed as opening testimony, may be subject to exclusion from rebuttal on the motion of a party or the Committee's own initiative.

<sup>4</sup> To be determined.

## Purpose of Prehearing Conference

The Prehearing Conference is a public forum where the Committee will assess the parties' (Applicant, Energy Commission Staff, Intervenors) readiness for an Evidentiary Hearing, the format of the Evidentiary Hearing, identify areas of agreement or dispute, and discuss the remaining schedule and procedures necessary to conclude the AFC process. (Cal. Code Regs., tit. 20, § 1224.)

Local, state, federal, and tribal governmental agencies may participate in the Prehearing Conference and Evidentiary Hearing as necessary. (Cal. Code Regs., tit. 20, § 1714.5.) Elected officials and members of the public may present public comments at these events and/or submit written comments via the Energy Commission's e-Commenting system at:

<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=13-AFC-01>.

## ORDER REGARDING PREHEARING CONFERENCE STATEMENTS AND EXHIBIT LISTS

All parties are **ORDERED** to docket a Prehearing Conference Statement and Exhibit List ***no later than 5:00 p.m. on Wednesday, November 2, 2016***, unless otherwise directed by the Committee. Failure to timely docket a Prehearing Conference Statement and Exhibit List may result in exclusion of evidence.

"Subject areas" are identified in the table of contents of the Final Staff Assessment (FSA), Part 1.<sup>5</sup>

### The Prehearing Conference Statement must specify under separate headings:

1. The subject areas that are complete and ready to proceed to Evidentiary Hearing;
2. The subject areas upon which any party proposes to introduce testimony in writing rather than through oral testimony;
3. The subject areas that are not complete and not yet ready to proceed to Evidentiary Hearing, and the reasons therefor;
4. The subject areas that remain disputed and require adjudication, the issues in dispute, and the precise nature of the dispute for each issue;
5. The identity of each witness the party intends to sponsor at the Evidentiary Hearing, the subject area(s) about which the witness(es) will offer testimony, whether the testimony will be oral or in writing, a brief summary of the testimony

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<sup>5</sup> TN 213768

to be offered by the witness(es), qualifications of each witness, the time required to present testimony by each witness, and whether the witness seeks to testify telephonically;

6. Subject areas upon which the party desires to question the other parties' witness(es), a summary of the scope of the questions (including questions regarding witness qualifications), the issue(s) to which the questions pertain, and the time desired to question each witness. (Note: a party who fails to provide, with specificity, the scope, relevance and time for questioning other parties' witness(es) risks preclusion from questioning witnesses on that subject area.);
7. A list identifying exhibits with transaction numbers (TN) that the party intends to offer into evidence during the Evidentiary Hearing and the technical subject areas to which they apply (see below for further details on Exhibit Lists); and
8. Proposals for briefing deadlines or other scheduling matters.

All documentary evidence must be docketed in this proceeding's docket (13-AFC-01) and have a transaction number assigned by the California Energy Commission Dockets Unit in accordance with the Revised General Orders Regarding Electronic Document Formats, Electronic Filing and Service of Documents and Other Matters filed August 5, 2016.<sup>6</sup> **Exhibits without a TN, or not docketed in this proceeding's docket, will not be received into evidence absent a showing of good cause.**

The parties shall exchange documentary evidence, including written testimony, by docketing an **Exhibit List**. Each document shall be numbered and identified on the Exhibit List as follows:

- Applicant's exhibits shall be numbered *consecutively* as **Exhibits 1000 through 1999**;
- Energy Commission Staff's exhibits shall be numbered *consecutively* as **Exhibits 2000 through 2999**; and
- Intervenor Los Cerritos Wetlands Land Trust's exhibits shall be numbered *consecutively* as **Exhibits 3000 through 3999**.

The Exhibit Lists shall be formatted as four columns. The first column shall list the proposed Exhibit Number. The second column shall contain the TN of the corresponding document. The third column shall state the title of the document as shown in the docket. The fourth column shall state the subject area(s) to which the exhibit applies. Hearing Office Staff from the Energy Commission will then add the Exhibit Number information into the e-filing system and issue a Master Exhibit List.

***Failure of a party to comply with the filing requirements stated in this Order may preclude that party from participating in the Evidentiary Hearing.***

---

<sup>6</sup> TN 212646

## **Formal and Informal Hearing Procedures**

Pursuant to California Government Code section 11445.10 et seq., and California Code of Regulations, Title 20, §§ 1207, 1210, the Committee may conduct all or portions of the Evidentiary Hearing using an informal procedure. At the Prehearing Conference, the Committee will discuss with the parties the use of informal and formal procedures.

The informal hearing process would generally proceed in the following order:

1. All parties' witnesses on the subject area at hand are sworn in as a panel;
2. Applicant's witnesses would provide a brief opening statement summarizing the key points and conclusions of their testimony;
3. Staff's witnesses would provide a brief opening statement summarizing the key points and conclusions of their testimony;
4. Intervenors' witnesses would provide a brief opening statement summarizing the key points and conclusions of their testimony;
5. Open discussion among the witness panelists led by the Committee;
6. Attorneys may follow up with questions to their own or other witnesses to the extent the Committee finds the questioning productive; and
7. At the conclusion of the attorneys' examination of the witnesses, the Committee may ask witnesses additional questions or allow panelists to ask additional questions of each other and to offer follow-up answers.

The formal hearing process would generally proceed as follows:

1. A party asks direct questions of its witnesses on the subject area at hand, either one at a time or seated as a panel.
2. The other parties then, in turn, ask cross-examination questions of the witness or panel who just testified.
3. The offering party can ask re-direct questions at the Committee's discretion.
4. The other parties can ask re-cross questions at the Committee's discretion.
5. Repeat the above steps for the witnesses offered by the other parties.

## **Notice of Closed Session Deliberations**

At any time during the conference or hearing, the Committee may adjourn to a closed session in accordance with California Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a closed

session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

## **Transcripts**

Parties are responsible for identifying errors in the transcripts of the proceedings. Corrections to the transcripts must be submitted to the Committee within 30 days of the filing of a transcript.

## **Public Adviser and Public Participation**

Members of the public are welcome to attend and offer oral or written comments at the Prehearing Conference and at the Evidentiary Hearing. It is not necessary to be an intervenor to participate in the public process. Written comments may also be submitted electronically by visiting the website at <http://www.energy.ca.gov/sitingcases/alamitos> and clicking on the “Submit e-Comment” link in the “Original Proceeding” box. Otherwise, written comments may be submitted by e-mailing them to [docket@energy.ca.gov](mailto:docket@energy.ca.gov), or by U.S. Mail to:

California Energy Commission  
Docket Unit  
Docket No. 13-AFC-01  
1516 Ninth Street, MS-4  
Sacramento, CA 95814

For all comments, please include the document number and proceeding name, “**Docket No. 13-AFC-01, Alamitos Energy Center**” in the subject line and on the cover page.

**PLEASE NOTE:** Your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the viewable public record. Additionally, this information may become available via search engines such as Google and Yahoo.

The Energy Commission’s Public Adviser’s Office is available to assist the public in participating in the proceedings. For assistance, contact Alana Mathews, Public Adviser, at (916) 654-4489 or (800) 822-6228, or by e-mail at [publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov).

If you have a disability and need assistance to participate in the Prehearing Conference or Evidentiary Hearing, contact Poneh Jones at least five days prior to the event at (916) 654-4425, or by e-mail at [poneh.jones@energy.ca.gov](mailto:poneh.jones@energy.ca.gov).

## Contact Information

Questions of a legal or procedural nature should be directed to Kenneth Celli, Hearing Officer, at (916) 651-8893, or by e-mail at [ken.celli@energy.ca.gov](mailto:ken.celli@energy.ca.gov).

Technical questions about the project should be directed to Keith Winstead, Staff Project Manager, at (916) 654-5191, or by e-mail at [keith.winstead@energy.ca.gov](mailto:keith.winstead@energy.ca.gov).

Media inquiries should be directed to the Media and Public Communications Office at (916) 654-4989 or by e-mail at [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov).

Information regarding the status of the project, as well as notices and other relevant documents pertaining to this proceeding, may be viewed on the Energy Commission's web page at <http://www.energy.ca.gov/sitingcases/alamitos>.

Dated: October 14, 2016 at Sacramento, California

Original signed by

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KAREN DOUGLAS  
Commissioner and Presiding Member  
Alamitos Energy Center AFC Committee

Original signed by

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JANEA A. SCOTT  
Commissioner and Associate Member  
Alamitos Energy Center AFC Committee

Sent to mailing list number 7502, 7503, 7504

**INSTRUCTIONS FOR USING WEBEX TELECONFERENCING  
USING YOUR COMPUTER AND/OR TELEPHONE**

<b>EVENT</b>	<b>DATE</b>	<b>MEETING NUMBER</b>
<b>Alamitos Prehearing Conference</b>	<b>Wednesday November 9, 2016 3:00 p.m.</b>	<b>923 848 042</b>
<b>Alamitos Evidentiary Hearing</b>	<b>Tuesday November 15, 2016 12:00 p.m. noon</b>	<b>929 750 730</b>

**Using Your Computer:**

1. Go to <https://energy.webex.com> and enter the above meeting number.
2. When prompted, enter your name and e-mail address.
3. After a moment, an Audio Conference Box will offer you a choice of audio connections:
  - a) To have WebEx call you back: Type your area code and phone number into the drop down box and click “Call Me” (Click on “Use Phone” if you do not see the drop down box.)
  - b) To call into the teleconference from your phone (if, for example, your phone is an extension or you are an international caller): Use the drop-down box to select “I will Call in” and follow the on-screen directions. Click “All global call-in numbers” if you need to look up an international call-in number.
  - c) To listen and talk over your computer: If you have the needed equipment and your computer is configured, click the “Call Using Computer” button. (You may need to click “Use Computer for Audio” to make the button visible.)

**Telephone Only:**

1. Call 1 (866) 469-3239 (toll-free in the U.S. and Canada. International Callers can select a global call-in number at <https://energy.webex.com/energy/globalcallin.php>.)
2. When prompted enter the meeting number above.

Please be aware that WebEx audio and on-screen activity may be recorded. WebEx Technical Support is available at 1 (866) 229-3239.

**Prehearing Conference Agenda  
Alamitos Energy Center Amendment**

**Wednesday, November 9, 2016  
Beginning at 3:00 p.m.**

**California Energy Commission  
Art Rosenfeld Room – Hearing Room A  
1516 Ninth Street  
Sacramento, CA 95814**

1. Call to Order
2. Report from Applicant, Staff and Intervenor(s) regarding their readiness for the upcoming Evidentiary Hearing, proposed testimony and witnesses; Committee discussions with the parties about the order of subject areas, use of informal and formal procedures, and other matters in preparation for the Hearing.

3. Public Comment

Members of the public and other interested persons and entities may speak up to three minutes on a matter appearing on this agenda.

4. Closed Session (if necessary)

Closed session deliberation by the Committee on any matters submitted for decision by the Committee including, but not limited to, pending motions and scheduling.

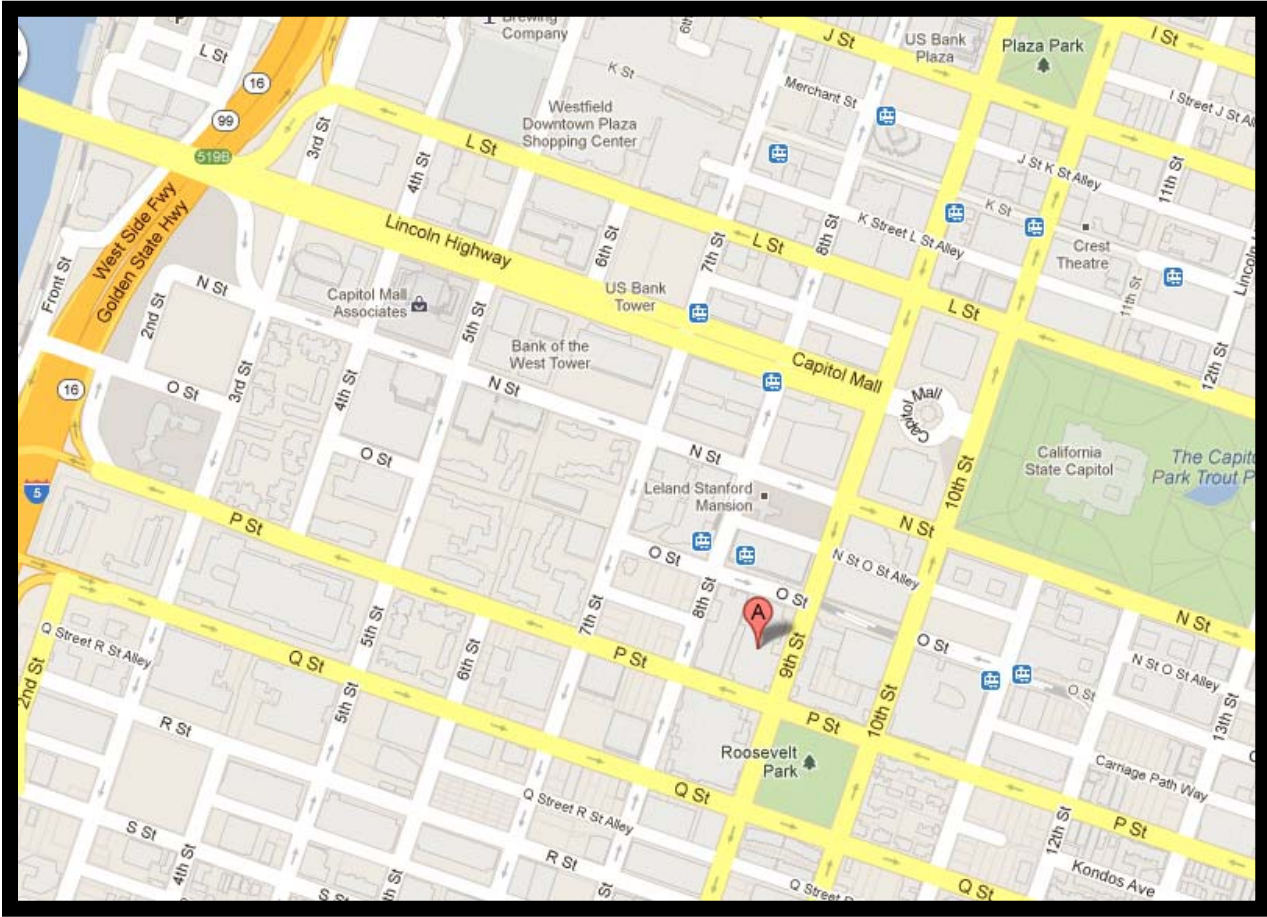
The Committee may adjourn to Closed Session in accordance with Government Code, section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a Closed Session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

5. Adjourn

Agency Contact: Kenneth Celli, Hearing Officer, at (916) 651-8893 or e-mail at [ken.celli@energy.ca.gov](mailto:ken.celli@energy.ca.gov).



**Prehearing Conference at the California Energy Commission  
Art Rosenfeld Room – Hearing Room A  
1516 Ninth Street  
Sacramento, CA 95814  
(Wheelchair Accessible)**



**Evidentiary Hearing Agenda  
Alamitos Energy Center Amendment**

**Tuesday, November 15, 2016  
Beginning at Noon - Public Comment Period Begins at 3:00 p.m.**

**The Grand Event Center  
Catalina Room  
4101 E. Willow Street  
Long Beach CA 90815**

1. Call to Order – noon
2. Evidentiary Hearing

The order of subject areas will be determined following the November 9, 2016 Prehearing Conference and announced by a separate document filed in the Docket and available via the Energy Commission's webpage at:  
<http://www.energy.ca.gov/sitingcases/alamitos/>.

Receipt of evidence from Applicant, Staff, and Intervenor(s) on the Application for the Alamitos Energy Center.

3. Public Comment – 3:00 p.m.

Members of the public and other interested persons and entities may speak up to three minutes on a matter appearing on this agenda. The Committee has set aside specific time to receive public comments at 3:00 p.m.

4. Closed Session (if necessary)

Committee Closed Session consideration of the following item:

**APPLICATION FOR THE CERTIFICATION OF THE ALAMITOS ENERGY CENTER**

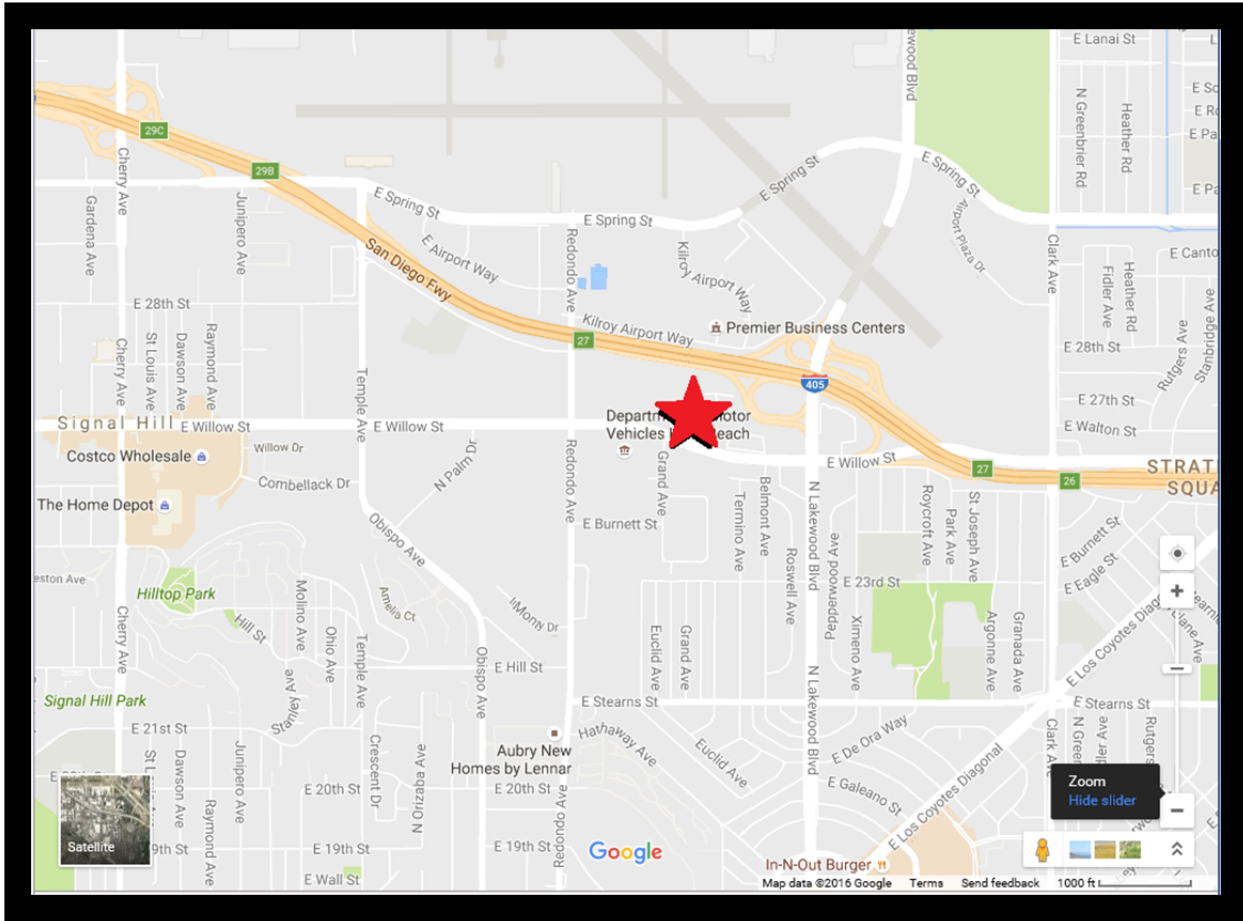
Deliberation by the Committee on any matters submitted for decision by the Committee including, but not limited to, pending motions and scheduling.

The Committee may adjourn to Closed Session in accordance with Government Code section 11126, subdivision (c)(3), which allows a state body, including a delegated committee, to hold a Closed Session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.

5. Adjourn

Agency Contact: Kenneth Celli, Hearing Officer, at (916) 651-8893 or e-mail [ken.celli@energy.ca.gov](mailto:ken.celli@energy.ca.gov).

**Alamitos Energy Center AFC Evidentiary Hearing  
The Grand Event Center  
Catalina Room  
4101 E. Willow Street  
Long Beach CA 90815  
(Wheelchair Accessible)**



1 Robert Simpson  
2 27126 Grandview Avenue  
3 Hayward, CA. 95542  
4 Phone: (510) 643-4171  
5 Email: rob@redwoodrob.com

6 *Pro Se*

7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 HELPING HAND TOOLS and ROBERT  
10 SIMPSON,

11 Plaintiff,

12 v.

13 CALIFORNIA ENERGY COMMISSION,  
14 JANEA SCOTT, in her capacity as  
15 Commissioner, and ALANA MATHEWS,  
16 in her capacity as Public Advisor,

17 Defendant.

No.

**ORDER FOR TEMPORARY  
RESTRAINING ORDER**

18 This Matter came before the Court on Plaintiffs' Motion for Temporary Restraining Order  
19 supported by Verified Complaint and the affidavit of Robert Simpson. The Court has examined  
20 the Motion, Complaint and affidavit and heard the arguments of the Plaintiff. The Court Finds:

21 1. Defendants intend to proceed in the certification of the Alamos Energy Center and continue to  
22 hold a hearing on Tuesday November 15, 2016.

23 2. This will cause immediate, serious and irreparable harm to Plaintiffs.

24 3. Unless restrained by this Court, Defendants will continue to proceed with the certification  
25 process.

26 4. This action on the part of Defendants will occur before this matter can be heard on Plaintiffs'  
27 Motion for a Preliminary Injunction.

28 WHEREFORE, IT IS ORDERED that Defendants, their agents, officers, assigns, and all persons

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acting in concert with them are hereby temporarily restrained and enjoined from continuing with the Alamitos Energy Center certification process. Provided that Plaintiff, or Plaintiff's agent, first file an undertaking with surety, or cash in lieu of a bond, in the sum of \$\_\_\_\_\_ for payment of such costs and damages as may be incurred or suffered by any party who may be found to be wrongfully restrained or enjoined, such security to be approved by the Court.

THIS ORDER shall be immediately served upon the Defendants. Defendants are also notified they can apply to the court for modification/dissolution on 2 days' notice or such shorter notice as the court may allow.

THIS ORDER shall expire on \_\_\_\_\_, at \_\_\_\_\_ unless it is further extended by Order of the Court.

Done In Open Court this \_\_\_\_\_.

\_\_\_\_\_  
United States District Judge

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6 *Pro Se*

7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 ROBERT SIMPSON,

10 Plaintiff,

11 v.

12 CALIFORNIA ENERGY COMMISSION,  
13 JANEA SCOTT, in her capacity as  
14 Commissioner, and ALANA MATHEWS,  
in her capacity as Public Advisor,

15 Defendant.

No.

**ORDER TO SET HEARING FOR  
PRELIMINARY INJUNCTION, DATE  
FOR FILING REPSONSIVE PLEAINDG,  
AND AMOUNT OF BOUND**

16  
17 It is Ordered, Plaintiff's motion for a preliminary injunction is set for hearing at \_\_\_\_ on \_\_\_\_, at  
18 \_\_\_\_\_; that the trial of this action be advanced and consolidated with the hearing  
of Plaintiff's motion for a preliminary injunction.

19  
20 IT IS FURTHER ORDERED, Plaintiff will file an undertaking with surety, or cash in lieu of a  
bond, in the sum of \$\_\_\_\_\_.

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22 IT IS FURTHER ORDERED, both parties shall file responsive pleadings on \_\_\_\_\_.

23 Dated: \_\_\_\_\_

24  
25 \_\_\_\_\_  
United States District Judge

26 Consented to and Approved: