

DOCKETED

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| Docket Number: | 13-CAI-01 |
| Project Title: | Robert Landwehr Request for Investigation and Complaint |
| TN #: | 200206 |
| Document Title: | Request for an Investigation and Complaint |
| Description: | N/A |
| Filer: | Sabrina Savala |
| Organization: | Robert Landwehr |
| Submitter Role: | Other Interested Person |
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CALIFORNIA ENERGY COMMISSION1516 Ninth Street
Sacramento, California 95814Main website: www.energy.ca.gov**Form CEC-108: SERVICE ON THE CHIEF COUNSEL****PURPOSE OF THIS FORM:**

Energy Commission regulations found in Title 20 of the California Code of Regulations set forth three instances in which petitions or requests must be filed with or served on the Chief Counsel. The Chief Counsel has designated the Dockets Office as his agent for accepting service or filing of the following documents. The documents identified in this form will be deemed filed with or served on the Chief Counsel on the date they are docketed, provided this completed form is docketed with them. This form is your instruction to the Docket Office staff to serve your document on the Chief Counsel. You may **use this form** to initiate a proceeding under any of the three sections (Section 1231, Section 1720, and Section 2506), **cut and paste** the information below into an email, or **type the information below** into an email that accompanies your document to the Docket Office. The email address for the Dockets Office is docket@energy.ca.gov. The mail address is 1516 9th Street, MS-4, Sacramento, CA 95814.

Filer's Name: ROBERT LANDWEHRTitle of document to be served: REQUEST FOR AN INVESTIGATION AND COMPLAINT PURSUANT TO SEC. 1231, CODE OF REGULATIONSThis document relates to docket #: 07-AFC-1CPlease check only one of the following boxes:

Section 1231: I am filing a **complaint or request for investigation**. Please file my document with the Chief Counsel.



Section 1720: I am filing a **petition for reconsideration of a decision or order** within 30 days after the decision or order is final. Please file my document with the Chief Counsel.



Section 2506: I am serving a **petition to inspect or copy confidential records**. Please serve my document on the Chief Counsel.

This form is available at the Docket Unit counter and on the Energy Commission website at [www.energy.ca.gov/commission/chief_counsel/docket.html]. Please see the Instructions that accompany this form for more information.

IF YOU NEED ASSISTANCE COMPLETING THIS FORM, PLEASE CONTACT THE COMMISSION'S PUBLIC ADVISER AT (800) 822-6228; or (916) 654-4489 or EMAIL: PUBLICADVISER@ENERGY.CA.GOV

August 13, 2013

Chief Counsel
California Energy Commission
Dockets Unit, MS-4
Docket No. 07-AFC-1C
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Request for Investigation and Complaint pursuant to section 1231 of Code of Regulations

Dear Chief Counsel:

Section 1231 of the California Code of Regulations reads, *"Any person, including but not limited to the commission staff or the owner or operator of a power plant or transmission line, may file a complaint alleging a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission."* *"Any person may also file a request for investigation, including a request for jurisdictional determination regarding a proposed or existing site and related facilities."*

COMPLAINANT/PETITIONER

Robert Landwehr
27961 Celia Road
Murrieta, CA 92563
(951) 698-8449

RESPONDENTS

Douglas B. Robertson
Victorville City Manager
14343 Civic Drive
P.O. Box 5001
Victorville, CA 92392-5001

Karen Douglas
Commissioner , CEC
1516 Ninth Street
Sacramento, CA 95814

Jared Babula
Senior Staff Counsel, CEC
1516 Ninth Street
Sacramento, CA 95814

STATEMENT OF FACTS

On March 28, 2013, the City of Victorville filed a petition for extension of the construction deadline for the Victorville 2 Hybrid Power Project; Docket No: 07-AFC-1. (TN #70186)

This petition states under heading VII: **"This petition for extension of the construction deadline is submitted in accordance with the CEC rules of practice and procedure."**

"The Project will continue to comply with all applicable Laws, Ordinances, Regulations and Standards (LORS)."

A hearing was held on June 12, 2013 at the CEC to determine if there was **"good cause"** to approve the City of Victorville's Petition for the extension of the construction deadline. After some brief discussion, Commissioner Karen Douglas seconded a motion to approve the City of Victorville's Petition and the Commission voted unanimously in approving the extension.

On May 8, 2013, while the proceeding was pending, Victorville City Manager Doug Robertson sent CEC Commissioner Karen Douglas an e-mail in support of its Petition to extend construction. (EXHIBIT A) Victorville City Manager Robertson states in the communication, *"I look forward to meeting you at the June 12, 2013 Business Meeting. Should you have any questions prior to, please don't hesitate to ask."*

Upon review of the transcripts and audio record of Item #8 of the June 12th hearing, this e-mail communication between Victorville City Manager Doug Robertson and CEC Commissioner Karen Douglas is not disclosed or reported. This e-mail communication is not found in the back-up material of the June 12th hearing minutes nor is it docketed on the power plant proceeding's page found on the CEC internet site. Likewise, there is no disclosure of any follow-up communication that may have occurred between CEC Commissioner Karen Douglas and Victorville City Manager Robertson while the proceeding was pending.

In addition, CEC Senior Staff Counsel Jared Babula failed to disclose this e-mail communication in my public records request of June 27, 2013. (EHIBIT B1 & B2)

STATUTES REGARDING EX PARTE CONTACTS AND PUBLIC RECORDS REQUESTS

Section 1216(a) of the California Code of Regulations, Title 20 states, *"The ex parte provisions of Article 7 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11430.10 et seq.) apply to all adjudicative proceedings conducted by the commission. For the purpose of this section, "presiding officer" means all commissioners and all hearing advisors."*

Section 11430.10(a) of the California Government Code states, *"While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication."*

Section 11430.50 (a) of the California Government Code states, *"If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:*

- (1) If the communication is written, the writing and any written response of the presiding officer to the communication.*
- (2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.*
- (b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.*
- (c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:*
 - (1) The party shall be allowed to comment on the communication.*
 - (2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded."*

Section 11430.60 of the California Government Code states, *"Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer."*

Section 6250 of the California Government Code states, *"In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state."*

ACTION COMPLAINANT DESIRES THE COMMISSION TO TAKE

- Conduct an honest, thorough and complete investigation.
- Reopen the hearing to consider if **good cause** exists to approve the City of Victorville's Petition to extend the construction deadline of the Victorville 2 Hybrid Power Plant Project. [11430.50(c)2 of the Government Code]
- Disqualification of Commissioner Karen Douglas from the hearing. (11430.60 of the Government Code)
- Fully comply with my public records request. (6250-6270 of the Government Code)

COMPLAINANT STATEMENT

Depending on the results of the investigation and the action the Commission takes, the Respondents will be minimally affected by the relief sought. Greater good will be accomplished for the people of the State of California by knowing that the California Energy Commission respects the rule of law so as to ensure integrity and fairness in its judicial proceedings.

COMPLAINANT DECLARATION

I, Robert Landwehr, declare that the foregoing statements are true under the penalty of perjury in the State of California. I declare that the exhibits are true and correct copies under the penalty of perjury in the State of California.



Robert Landwehr

August 13, 2013
Date

Jenele Davidson

From: Doug Robertson
Sent: Wednesday, May 08, 2013 6:13 PM
To: 'karen.douglas@energy.ca.gov'
Cc: 'Ollie.Awolowo@energy.ca.gov'; Jenele Davidson
Subject: Victorville 2 Application for

Commissioner Douglas,

I was thrilled to receive notification from your staff regarding the Petition to Extend the Deadline for the Victorville 2 Hybrid Power Project. This notification was the final staff report supporting the City of Victorville request for an additional five (5) years to commence construction. I would like to commend your staff in their assistance helping us navigate a process which we were unfamiliar with. The city recently decided to proceed with the request after much internal deliberation. This decision was made only after consultation with your staff that was so confidence inspiring we believed it could be done using city staff rather than consultants.

As your staff attests in their report, the city has shown diligence and significant efforts in attempting to develop the plant, at significant cost, over the last five years. Factors outside our control have prevented the start of construction but this has not deterred our efforts even at the height of what is being called the "Great Recession". We believe this plant will be constructed within the next five years if the extension request is granted by the Commission.

As referenced above, the city is pursuing this extension itself rather than relying on consultants. Specifically, Inland Energy is no longer the contact for this project. If you have any questions or comments, please direct those to me. As a municipality, we sit as a regulatory authority on a variety of issues within our city. Having been on that side of the dais, let me assure you we intend to only be a source of information and do not intend to pester you or your staff. We stand ready to be a significant part of solving California's future energy needs. I look forward to meeting you at the June 12, 2013 Business Meeting. Should you have any questions prior to, please don't hesitate to ask.



Douglas B. Robertson
City Manager

EXHIBIT A

RE: Public Records Request

From: **Babula, Jared@Energy** (Jared.Babula@energy.ca.gov)
Sent: Thu 6/27/13 1:28 PM
To: boblandwehr@msn.com (boblandwehr@msn.com)
Cc: Babula, Jared@Energy (Jared.Babula@energy.ca.gov)

Mr. Landwehr,

I have receive your records request seeking all correspondence between the California Energy Commission and the City of Victorville. I am working with staff to locate all responsive materials. I anticipate all documents will be in electronic format and can be emailed to you by early next week. Please contact me if you have any questions.

Sincerely,

Jared Babula

-----Original Message-----

From: listenergia@energy.state.ca.us
[mailto:listenergia@energy.state.ca.us]
Sent: Thursday, June 27, 2013 11:56 AM
To: Tran, Muoi-Lynn@Energy; Energy - Mediaoffice; Babula, Jared@Energy;
Blair, Julia@Energy; boblandwehr@msn.com
Subject: Public Records Request

First Name: Bob
Last Name: Landwehr
Email address: boblandwehr@msn.com
Company:
Address: 27961 Celia Road
City: Murrieta
State: CA
ZipCode: 92563
Phone No: (951) 698-8449

Requested Action: All correspondence (including e-mail) between the California Energy Commission and Victorville from March 1, 2013 to June 26, 2013 concerning the Victorville 2 power plant project.

EXHIBIT B-1

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



July 2, 2013

Bob Landwehr
27961 Celia Road
Murrieta, CA 92563

Re: Request for Correspondence (including e-mail) Between the California Energy Commission and Victorville from March 1, 2013 to June 26, 2013 Concerning the Victorville 2 Power Plant Project

Dear Mr. Landwehr:

Enclosed is a CD containing responsive materials to your request seeking correspondence between the California Energy Commission and the City of Victorville regarding the Victorville hybrid facility.

This concludes the Commission's review of your request. If you have any questions about this matter, please direct them to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Babula".

Jared Babula
Senior Staff Counsel

JB/jt
Enclosure

EXHIBIT B-2