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STATE OF CALIFORNIA

**Energy Resources Conservation
And Development Commission**

**Landwehr's Petition for Reconsideration of a
Decision to Extend the 5-year Construction
Deadline for the Victorville 2 Power Plant
Project**

**Docket No. 07-AFC-1C
Order No. 13-0911-8**

**ORDER OF THE CALIFORNIA ENERGY COMMISSION
DENYING PETITION FOR RECONSIDERATION**

I. INTRODUCTION

On July 11, 2013, Robert Landwehr timely filed a "Petition for Reconsideration of a Decision to Extend the 5-year Construction Deadline for the Victorville 2 Power Plant Project" (Petition).

II. PROCEDURAL HISTORY

Mr. Landwehr makes the following assertions regarding the Commission's Decision in the above-captioned matter: (1) he is a landowner of a parcel identified by the City of Victorville as being on the project site (Petition, p.1); (2) he has raised Brown Act issues relating to the City of Victorville, and compliance issues relating to the California Energy Commission, (Energy Commission) (Petition, p.1); (3) he sent a "Request to postpone hearing to extend the 5-year construction deadline for the Victorville 2 Power Plant" on May 22, 2013 (Petition, p. 1); (4) he was not given notice of the June 12, 2013 hearing on the extension (Petition, p. 2); (5) he planned on attending the hearing on the extension to present evidence (Petition, p. 2); and (6) he mailed a "Request for Revocation of Certification and Associated Civil Penalties for the Victorville 2 Power Plant Project" on June 15, 2013 (Petition, p.3).

III. ANALYSIS

Having reviewed Mr. Landwehr's Petition, the Energy Commission denies the Petition for Reconsideration as it fails to meet the threshold requirements identified in California Code of Regulations, title 20, section 1720(a), which sets forth that:

A petition for reconsideration must specifically set forth either: 1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case; or 2) an error in fact or change or error of law. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision. (Cal. Code Regs., tit 20, § 1720(a).)

Pursuant to section 1720(a), the following discussion provides the rationale for this ruling with respect to each issue raised by Mr. Landwehr.

Mr. Landwehr is a landowner on the project site and he was not provided notice of the hearing.

Section 1720(a) provides that a petition for reconsideration must set forth "1) new evidence that despite the diligence of the moving party could not have been produced during evidentiary hearings on the case..." In this instance, the Energy Commission is aware that

Mr. Landwehr and his family own a parcel of land on the project site. However, in an oversight, Mr. Landwehr was not added to the mailing list for the Victorville 2 Hybrid

Compliance Proceeding. Nonetheless, Mr. Landwehr sent to the Energy Commission several sets of comments on the Victorville 2 Power project during the 30-day public comment period prior to the June 12th hearing, and sent comments following the hearing.

Therefore, the Energy Commission deems Mr. Landwehr to have met the requirement of acting with due diligence in trying to bring evidence to the attention of the Energy Commission on this matter.

Mr. Landwehr has raised Brown Act issues relating to the City of Victorville, but those issues do not present new evidence, or demonstrate an error in fact or change or error of law, that would have had a substantial effect upon an element of the decision.

In his Petition and in prior filings with the Energy Commission, Mr. Landwehr asserts that his family was not properly noticed for a hearing held by the Victorville City Council and the Southern California Logistics Airport Authority Board on July 15, 2008, which resulted in the Council/Board adopting a resolution of necessity to exercise eminent domain over the Landwehr property. However, Mr. Landwehr attended the hearing and spoke before the Council/Board. In addition, in 2008, the

City of Victorville filed suit against the Landwehr family. In the portion of the court transcript provided by Mr. Landwehr, the judge put the hearing over for 30 days in an effort to give Mr. Landwehr additional time to address condemnation of his property and to cure any error in noticing the Landwehr family.

None of the Brown Act issues raised by Mr. Landwehr regarding notice by the City Council/Board are within the Energy Commission's jurisdiction, but are within the jurisdiction of the City of Victorville. The issues of eminent domain and condemnation of the Landwehr property are also within the jurisdiction of the City of Victorville. None of these matters affect the basis for extending time for construction as set forth in the City of Victorville's Petition for Extension of the Construction Deadline (Docket 07-AFC-1, March 28, 2013), or in the Commission's June 12, 2013 Order granting the petition. Therefore, the Brown Act issues asserted in the Petition do not present new evidence, or raise an error in fact or a change or error in law, that would have an effect upon a substantive element of the Energy Commission's decision to extend the construction deadline for the Victorville 2 project.

Mr. Landwehr has raised compliance issues relating to the California Energy Commission, but those issues do not present new evidence, or demonstrate an error in fact or change or error of law, that would have had a substantial effect upon an element of the decision.

Mr. Landwehr also claims in 2006 and again in 2008, the project owner conducted a desert tortoise survey on his property without his family's knowledge or permission. He further claims that in October, 2008, the project owner violated the terms of the license by installing black silt screening on their property in violation of the Desert Tortoise Translocation Plan. The silt screening was later removed and sandbags were left behind.

Mr. Landwehr does not claim that he reported this alleged violation to the Energy Commission and Energy Commission compliance staff does not have a record of a complaint by Mr. Landwehr regarding this issue.

Issues regarding compliance of the project license may have fallen within the jurisdiction of the Energy Commission had those concerns been reported to the Energy Commission's compliance unit in 2008. At this time, however, as those matters have been resolved, they are no longer at issue. Therefore, the compliance issues asserted in the Petition do not present new evidence, raise an error in fact or a change or error in law, that would have an effect upon a substantive element of the Energy Commission's decision to extend the construction deadline for the Victorville 2 project.

IV. CONCLUSION

For the foregoing reasons, the Petition is hereby denied.

CERTIFICATION

The undersigned Secretariat to the Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on September 11, 2013.

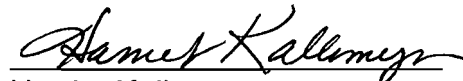
AYE: Weisenmiller, Douglas, McAllister, Scott

NAY: None

ABSENT: Hochschild

ABSTAIN: None

Dated: September 17, 2013


Harriet Källemeyn,
Secretariat