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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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**PETITIONS TO AMEND THE
CARLSBAD ENERGY CENTER PROJECT**

Docket No. 07-AFC-06C

**COMMITTEE ORDER DENYING ROBERT SARVEY'S MOTION TO
REQUIRE THE FILING OF A NEW AFC AND MOTION TO STRIKE CITY OF
CARLSBAD'S BRIEF**

Upon consideration of Robert Sarvey's March 16, 2015, Motion to Require the Filing of a New AFC¹ ("Sarvey Motion 1") and April 29, 2015, Motion to Strike City of Carlsbad's Brief² ("Sarvey Motion 2"), the Committee assigned to conduct proceedings on the Carlsbad Energy Center Project Amendments (Committee) makes the following findings:

1. On April 1 and April 2, 2015, this Committee held Evidentiary Hearings on the Petitions to Amend the Carlsbad Energy Center Project (CECP) approved by the Energy Commission in May, 2012.³
2. On June 9, 2015, this Committee filed its Presiding Member's Proposed Decision (PMPD) recommending approval of the CECP Amendments.⁴
3. Sarvey Motion 1, while requesting that a new Application for Certification (AFC) be filed, is intended to cause the owner of the Carlsbad Energy Center Project to pay a new AFC application fee for the currently pending amendments. If that fee were paid, Mr. Sarvey would not expect that the current proceeding be restarted from the beginning.⁵
4. The Energy Commission charges an annual compliance fee for approved projects such as the CECP; that annual compliance fee is currently \$27,049. The Energy Commission does not have the legal authority to charge an additional fee to process project amendments. The AFC fee for a project of the amended project's size (632 MW) would be approximately \$612,000.⁶
5. Sarvey Motion 1 does not describe any legal authority under which the Energy Commission could collect a fee for an amendment of an approved project or any theory under which the amended project could properly be considered a new project rather than an amendment of an existing project.

¹ TN 203893.

² TN 204449.

³ Transcripts may be found at TN 204130 and TN 204131; 2012 Decision: TN 203721.

⁴ TN 204953.

⁵ TN 204131, p. 223

⁶ http://www.energy.ca.gov/siting/filing_fees.html

6. Sarvey Motion 2 seeks to strike a brief filed by the City of Carlsbad⁷ following the Evidentiary Hearings. It asserts that only parties in this proceeding may file briefs.
7. The City of Carlsbad did not seek status as an intervenor in this proceeding. It did, however, offer its expertise to the Commission Staff and Committee and provided written testimony⁸ of which the Committee took official notice without objection from any party. The City of Carlsbad also made its witnesses available for questioning and offered oral testimony during the Evidentiary Hearings.
8. Absent the Energy Commission's exclusive jurisdiction over power plants of this nature, the City of Carlsbad would have jurisdiction over this project. The Energy Commission must apply local laws and regulations to the project. In doing so, we seek the City's guidance and advice in interpreting and applying those requirements.⁹
9. Mr. Sarvey does not cite any legal authority limiting the filing of briefs to parties, nor any prejudice that he would suffer by our consideration of the City's brief.¹⁰
10. The City of Carlsbad's brief provides the perspective of the local agency which would otherwise have jurisdiction over the project and is helpful to the Committee in the review of the evidence and preparation of its PMPD.

THEREFORE, THE COMMITTEE ORDERS that Sarvey Motion 1 and Sarvey Motion 2 are **DENIED**.

Dated: June 10, 2015, at Sacramento, California.

Original signed by

KAREN DOUGLAS
Commissioner and Presiding Member
Carlsbad Amendments Committee

Original signed by

ANDREW McALLISTER
Commissioner and Associate Member
Carlsbad Amendments Committee

⁷ TN 204340

⁸ Exhibits 101 – 105 (TNs 203845, 203507, 203421, 203514, 203544).

⁹ Title 20, Cal. Code. Regs, §1714(c).

¹⁰ Mr. Sarvey asserts that the City's refusal to respond to a data request filed by another party, Power of Vision, should disqualify it from filing a brief because it has failed to fulfill a duty required of a party. The City is not a formal party and the proper time to litigate that alleged transgression and any sanctions arising from it, has passed. It also fails as an equitable ground for refusing to consider the brief.