

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	206181
Document Title:	Commission Order Denying Robert Sarvey's Peition for Reconsideration
Description:	N/A
Filer:	Tiffani Winter
Organization:	California Energy Commission
Submitter Role:	Energy Commission
Submission Date:	9/23/2015 3:48:10 PM
Docketed Date:	9/23/2015



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**PETITIONS TO AMEND THE
CARLSBAD ENERGY CENTER PROJECT**

**Order No. 15-0922-1
Docket No. 07-AFC-06C**

**COMMISSION ORDER DENYING ROBERT SARVEY'S
PETITION FOR RECONSIDERATION**

Upon consideration of Intervenor Robert Sarvey's Petition for Reconsideration (Petition),¹ the California Energy Commission makes the following findings and conclusions:

FINDINGS

1. The petitions to amend the Carlsbad Energy Center Project were filed on April 29, 2014 and May 2, 2014.²
2. A committee of Commissioners Karen Douglas, Presiding Member, and Andrew McAllister, Associate Member, conducted evidentiary hearings on the amendment petitions on April 1 and April 2, 2015,³ and issued its Presiding Member's Proposed Decision (PMPD) on June 9, 2015,⁴ and an Errata to the PMPD on July 15, 2015.⁵
3. The PMPD and Errata were approved by the full Energy Commission at a hearing on July 30, 2015. A final Commission Decision approving the petitions to amend was docketed on August 3, 2015. By its terms, the Commission Decision was "adopted, issued, effective, and final" when it was docketed (filed).⁶
4. Pursuant to Public Resources Code Section 25530, a party to this Carlsbad proceeding may petition for reconsideration of the Commission Decision within 30 days of its adoption. The last day to file such a petition was September 2, 2015.
5. Mr. Sarvey was granted Intervenor (party) status in this proceeding on October 31, 2014.⁷
6. The Petition was filed on September 2, 2015.
7. The Petition was set for hearing before the Energy Commission on September 22,

¹ TN 205990

² TNs 202267 and 202287-1 through 202287-3, respectively

³ TNs 204130 and 204131

⁴ TN 204953

⁵ TN 205362

⁶ TN 205625, p. 6 of the .pdf file, paragraph 4

⁷ TN 203296

2015.⁸

8. On September 16, 2015, responses to the Petition were filed by the project proponent,⁹ the Sierra Club,¹⁰ and Energy Commission staff.¹¹ Robert Simpson filed his response¹² and Mr. Sarvey filed his reply to the responses on September 18, 2015.¹³

DISCUSSION

The issues Mr. Sarvey raises are not new to this proceeding. He has been arguing since at least the evidentiary hearings that the previously approved, fast-start combined cycle generating equipment permitted in 2012, was superior to the amended project's simple-cycle equipment in terms of efficiency of combustion—producing fewer air emissions per unit of generation and at a lower cost per unit of generation. The Commission Decision addresses those claims in its Alternatives section and explains why the combined-cycle units are not feasible.

Regarding whether only 5 turbine units should have been approved instead of the 6 units approved in the Commission Decision, the Decision explains why the Energy Commission felt that it was not bound to approve only the units currently having power purchase contracts. While the alleged statement of an attorney representing the project proponent that only 5 units would be constructed could not have been produced prior to the evidentiary hearings, it could have been brought to the Commission's attention prior to the July 30, 2015, adoption hearing. In any event, such evidence is not relevant in light of the Decision's refusal to tie the permitted generation to the amount currently under contract.

Mr. Sarvey asserts that the Decision's incorporation of an operating hours restriction—no operation between Midnight and 6 a.m. except in certain emergencies—must be analyzed as a potential source of environmental impact. He offers no evidence of such impacts, however, and the operating restrictions have been known since the filing of the amendment petitions.¹⁴

Mr. Sarvey could have determined on his own initiative to advance the alternative of including a clutch between the gas turbines and electric generators during the evidentiary hearings. As the project proponent notes, the most recent of the documents he proposes to introduce was dated in December 2014.

FURTHER FINDING

9. The new information proffered by Mr. Sarvey is, in the case of the alleged statement made by the project proponent's attorney, irrelevant, and otherwise was capable of

⁸ TNs 206058, 206100

⁹ TN 206121

¹⁰ TN 206122

¹¹ TN 206123

¹² TNs 206141, 206142

¹³ TN 206160

¹⁴ TN 202287-3, p. 64 of .pdf file, paragraph 4. e.

being produced during the evidentiary hearings.

CONCLUSIONS

1. The Petition was timely filed.
2. The grant of reconsideration is in the Energy Commission's discretion.
3. The Petition does not satisfy the requirements the Commission's regulation regarding Petitions for Reconsideration.¹⁵ It does not "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." It does not "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."
4. With the exception of the alleged statements of the project proponent's counsel, Mr. Sarvey is seeking to reopen and reargue issues that were addressed, or could have been addressed with the exercise of diligence, during the evidentiary hearings, the PMPD comment period, or during the Energy Commission's July 30, 2015, adoption hearing. The information that he identifies was available for him to offer during the evidentiary hearings.
5. The grounds for ordering reconsideration stated in the Petition are restatements and amplifications of issues and arguments previously raised in this proceeding or which could have with the exercise of diligence been raised prior to the Commission's July 30, 2015 approval of the PMPD and Errata. They do not justify ordering reconsideration. It is appropriate to deny the Petition.
6. The Petition does not give any cause for us to revisit or revise the findings and conclusions contained in the Commission Decision.

ORDERS

1. The Petition is **DENIED**.
2. The Commission Decision adopted, issued, effective, and final on August 3, 2015, remains in full force and effect.
3. This order is not subject to further reconsideration.
4. This Order is adopted, issued, effective, and final on the date this Order is docketed.

¹⁵ Title 20, California Code of Regulations § 1720:

(a) Within 30 days after a decision or order is final, the Commission may on its own motion order, or any party may petition for, reconsideration thereof. 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. . .

5. Judicial review of this Order is governed by Public Resources Code, section 25531.

CERTIFICATION

The undersigned Secretariat to the 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 22, 2015.

AYE: Weisenmiller, Douglas, McAllister, Hochschild, Scott

NAY: None

ABSENT: None

ABSTAIN: None

Dated: September 22, 2015, at Sacramento, California.

A handwritten signature in black ink, appearing to be 'TW', is written above a horizontal line.

Tiffani Winter
Secretariat
California Energy Commission