

DOCKETED

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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 PARTIALLY GRANTING ROBERT SIMPSON'S PETITION FOR RECONSIDERATION AND MOTION TO REOPEN THE EVIDENTIARY RECORD AND RESTORE MY INTERVENTION RIGHTS

Upon consideration of Intervenor Robert Simpson's Petition for Reconsideration and Motion to Reopen the Evidentiary Record and Restore My Intervention Rights (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 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. Simpson was granted Intervenor (party) status in this proceeding on September 23, 2014.⁷
6. The Petition was filed on September 2, 2015.

¹ TN 205986

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 203091

7. The Petition was set for hearing before the Energy Commission on September 22, 2015.⁸
8. On September 16, 2015, responses to the Petition were filed by the project proponent,⁹ Intervenor the Sierra Club,¹⁰ and Energy Commission staff.¹¹ Petitioner Simpson filed his reply to those responses on September 18, 2015.¹²

DISCUSSION

Mr. Simpson points out that it appears that the PMPD was not sent to the California Department of Fish and Wildlife, formerly Fish and Game (CDFW). He asserts that the failure to do so renders the subsequent process legally deficient. The remedy he proposes is to grant reconsideration, send the PMPD to CDFW and take additional comments and evidence from all parties before adopting a revised decision.

The other issues Mr. Simpson raises are not new to this proceeding. Rather than describe new evidence that could not have been produced at the evidentiary hearings and its effect on a substantive element of the Commission Decision, he reargues issues that were previously presented and discussed during the evidentiary hearings, in comments on the PMPD, and to the full Energy Commission at the July 30, 2015 adoption hearing. The new information he identifies could have been produced during the evidentiary hearings; having failed to convince us of the efficacy of his positions, he seeks to have another opportunity to bring in additional evidence and argument. Absent some new and compelling reason for reopening and reconsidering the Commission Decision, not presented here, it is past time to end those debates.

The Petition's caption mentions a request that Mr. Simpson intervention rights be restored. The body of the petition does not mention the point. We understand it to be about the limitations on his rights to the topics of Air Quality, Greenhouse Gas emissions, and Public Health, imposed by the Committee when it granted his Petition to Intervene. That limitation was specifically made "subject to review upon Petitioner's further motion and a specific showing of a compelling interest in the other topic areas considered in this proceeding" and did not affect "Petitioner's right to make public comments separately from his role as an Intervenor."¹³ Mr. Simpson initially appealed the limitations applied by the Committee to the full Commission, which denied his appeal.¹⁴ Though reminded at several points during the proceeding of the ability to request an expansion of the scope of his intervention,¹⁵ Mr. Simpson did not avail himself of those opportunities.

⁸ TNs 206058, 206100

⁹ TN 206121

¹⁰ TN 206122

¹¹ TN 206123

¹² TNs 206141, 206142

¹³ TN 203091, p. 2

¹⁴ TN 203282

¹⁵ TNs 203377, 203560

FURTHER FINDING

9. The information proffered by Mr. Simpson is largely in the nature of argument, speculation or conjecture rather than evidence. It is an attempt to reargue points previously raised in this proceeding by Mr. Simpson and others. To the extent that it constitutes actual evidence it was capable of being produced during the evidentiary hearings.

CONCLUSIONS

1. The Petition was timely filed.
2. Without deciding whether it is strictly necessary to send the decision out for additional comment, we find it prudent to address this potential deficiency by allowing CDFW an opportunity to provide any comments that it wishes to make on the decision. Following receipt of any such comments, the full Commission shall, at a subsequently noticed hearing, decide whether to change the Commission Decision.
3. Otherwise the Petition does not satisfy the requirements the Commission's regulation regarding Petitions for Reconsideration.¹⁶ 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. Petitioner Simpson 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 offers 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.

¹⁶ 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. . .

ORDERS

1. The Petition is **PARTIALLY GRANTED** for the sole purpose of allowing the California Department of Fish and Wildlife to review and comment on the Presiding Member's Proposed Decision docketed on June 9, 2015¹⁷ and the Commission Decision docketed on August 3, 2015.¹⁸ In all other respects the Petition, including the embedded motion, is **DENIED**.
2. Following a comment period of 30 days for CDFW's comments, those comments, if any, and any responsive comments, shall be considered by the full Commission and the Commission will decide whether to change the Commission Decision pursuant to Title 20, California Code of Regulations subsection 1720(c).
3. This Order is adopted, issued, effective, and final on the date this Order is docketed.
4. Further Reconsideration of the Commission Decision is not permitted.
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.

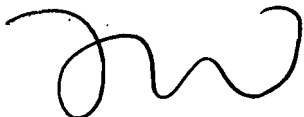
AYE: Weisenmiller, Douglas, McAllister, Hochschild, Scott

NAY: None

ABSENT: None

ABSTAIN: None

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



Tiffani Winter
Secretariat
California Energy Commission

¹⁷ TN 204954

¹⁸ TN 205625