

## DOCKETED

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<b>Project Title:</b>	Alamitos Energy Center
<b>TN #:</b>	213875
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October 3, 2016

Commissioner Karen Douglas, Presiding Member  
Commissioner Janea Scott, Associate Member  
Hearing Advisor Kenneth Celli  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

RE: Alamitos Energy Center (13-AFC-01): Response to Los Cerritos Wetlands Land Trust Email Request for Evidentiary Hearing Extension

Dear Commissioner Douglas, Commissioner Scott, and Hearing Adviser Celli:

Alamitos Energy Center, LLC (the “Applicant”) objects to the untimely request to delay evidentiary hearings made via email by Los Cerritos Wetlands Land Trust (“Trust”) on September 30, 2016.<sup>1</sup>

In its email to Hearing Adviser Celli and Staff Project Manager Keith Winstead, the Trust raises, for the first time, scheduling concerns for certain representatives of the Trust. Because of the vaguely referenced scheduling concerns, the Trust requests that evidentiary hearings be delayed by two weeks, until November 29, 2016.<sup>2</sup>

Significantly, the petition to intervene for the Trust was filed as “Petition for Intervention *As a Group*”, not a Petition for Ms. Lambe or any other individual.<sup>3</sup> It is the Trust who is the party, not Ms. Lambe. The supporting materials for the *Petition for Intervention As a Group* included a Membership List of 145 group members.<sup>4</sup> Every party, whether it is the Trust as a Group, the Staff or the Applicant must coordinate the schedules for their various members and witnesses. Delay for the entire month of November—for the benefit of Ms. Lambe or an unnamed volunteer-- would unfairly prejudice the Applicant and the Staff who have consistently and diligently responded to the Committee’s inquires on schedule and who have worked to make sure their group members and witnesses are available for the hearings on the dates as set forth in the Committee’s Scheduling Order.

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<sup>1</sup> TN#: 213870. The Committee would be within its rights to treat the Trust’s email as public comment, since the request was not properly filed as required by the Commission’s regulations and General Orders. The Committee Order partially granting the Trust’s petition to intervene required the Trust to file and serve documents on other parties, which it did not do in this instance.

<sup>2</sup> The precise nature of the scheduling conflicts that would preclude Ms. Lambe and her assistant from participating as scheduled in November are not specified, though specificity would not cure the deficiencies in the Trust claims, especially in light of its silence to date.

<sup>3</sup> TN#: 203145, p. 1, emphasis added.

<sup>4</sup> TN # 203151, pp.

As a matter of good public policy, the Trust should not be rewarded for its failure to timely state its concerns when directed by the Committee to speak on schedule. Prior to its untimely email, the Trust has not raised any scheduling concerns or restrictions despite having ample notice that hearings would occur in November and having many opportunities to raise potential issues. The record is replete with the Trust's failure to respond to the Committee's scheduling inquires and orders:

- The Applicant's July Status Report proposed a schedule for this proceeding that included milestones for this proceeding to occur in November. The Trust did not raise any concerns regarding the proposed schedule or otherwise identify potential schedule concerns.<sup>5</sup>
- At the August 24<sup>th</sup> Status Conference, the parties discussed the schedule for this proceeding. The Trust did not raise any concerns regarding schedule or otherwise identify potential schedule concerns.
- On August 26<sup>th</sup>, the Applicant filed two options for a proposed schedule in this proceeding, both of which included milestones for this proceeding to occur in November. The Trust did not raise any concerns regarding the proposed schedule or otherwise identify potential schedule concerns.<sup>6</sup>
- On August 31<sup>st</sup>, the Committee filed a revised scheduling order for this proceeding. The *Revised Scheduling Order* put all parties on notice of the publication date for the Final Staff Assessment ("FSA"). The *Revised Scheduling Order* also included a timeline for all other milestones for this proceeding. The Committee specifically admonished the parties: "The parties are to consider this schedule an outer boundary and make their best efforts to complete the milestones ahead of these dates."<sup>7</sup> The *Revised Scheduling Order* included milestones that would occur towards the end of October and early November. The Trust did not file anything to notify either the Committee or parties of potential schedule concerns. Instead, the Trust was silent.
- On September 15<sup>th</sup>, status reports were due from all parties. However, the Trust did not file a status report. The Trust has been a party to this proceeding since November 14, 2014.<sup>8</sup> As a party, the Trust is required to timely file status reports to "determine whether case development is progressing satisfactorily and to bring potential schedule delays or other relevant matters to the Committee's attention."<sup>9</sup> The Trust failed to do so.

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<sup>5</sup> The Applicant notes that Commission Staff provided several responses to the Applicant's proposed schedule. See, for example, TN#: 212378, and Staff's timely filed Status Reports since 2014.

<sup>6</sup> TN#: 212971.

<sup>7</sup> TN #: 213403, p. 1, emphasis added.

<sup>8</sup> TN#: 203336.

<sup>9</sup> TN#:207316, p. 3.

- On September 22<sup>nd</sup>, the Committee notified parties that evidentiary hearings would likely be held on November 14, 2016. The Trust did not notify either the Committee or parties of potential schedule concerns.
- On September 23<sup>rd</sup>, Staff timely filed the FSA in accordance with the *Revised Scheduling Order*. The Trust did not notify either the Committee or parties of potential schedule concerns.


Despite its party status, the Trust has not provided a status report since July 16, 2015, and otherwise did not “bring any potential schedule delays” to the Committee’s attention, despite plenary opportunities to do so.

The Committee Order granting the Trust Intervenor status expressly mandates that the Trust “shall fulfill the obligations of a party as set forth in all orders issued in this matter and section 1712 of the Commission’s regulations.”<sup>10</sup> It also expressly warns against the Trust’s participation delaying these proceeding: “The deadlines for conducting discovery and other matters **shall not be extended** by the granting of this Petition.”<sup>11</sup>

The Committee has been clear. The Trust has been silent. This proceeding should not be delayed and the Applicant prejudiced any further by the Trust’s failure to act with due diligence.

October 3, 2016

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<sup>10</sup> TN#: 203336, p. 2.

<sup>11</sup> *Id.*, emphasis added.