

## DOCKETED

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**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of:

The Petition to Amend the  
HUNTINGTON BEACH ENERGY PROJECT

**Docket No. 12-AFC-02C**

**AES HUNTINGTON BEACH ENERGY,  
LLC'S OPPOSITION TO ROBERT  
SIMPSON AND HELPING HAND  
TOOLS' PETITION TO INTERVENE**

**AES HUNTINGTON BEACH ENERGY, LLC'S OPPOSITION TO  
ROBERT SIMPSON AND HELPING HAND TOOLS' PETITION TO INTERVENE**

December 19, 2016

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**I. INTRODUCTION**

On or about December 16, 2016, Helping Hand Tools (“HHT”) and Robert Simpson (“Petitioners”)<sup>1</sup> filed a Petition to Intervene (“Petition”) in an effort to belatedly become a party to the Huntington Beach Energy Project (“HBEP”) Petition to Amend (“PTA”) proceeding (also referred to herein as the “Amended HBEP”). Project Owner AES Huntington Beach Energy, LLC (“Project Owner”) herein opposes the Petition on the grounds that Petitioner fails to demonstrate good cause supporting the petition as required by Title 20, California Code of Regulations, section 1207 for late-filed petitions to intervene.

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<sup>1</sup> The title of the Petition states that it is a Petition to Intervene by Helping Hand Tools and Robert Simpson, but the actual petition only references HHT as seeking intervention in the proceedings. It is not clear what Simpson’s role is, other than to represent HHT in the proceedings. (Petition at p. 2 (TN# 214868).) Mr. Simpson, however, refers to himself and HHT as “Petitioners” in a prehearing conference statement also filed on December 16, 2016. (TN# 214869.) Thus, this opposition opposes both the intervention request of HHT and Mr. Simpson.

## II. ARGUMENT

### A. The Petition Does Not Meet the Requirements of Section 1211.7(b)

Title 20, California Code of Regulations, section 1211.7(b) provides:

(b) A petition for intervention shall be filed no later than the deadline established by the presiding member, or if none is established, at least 30 days before the first evidentiary hearing in the proceeding. If the time period between notice of the first evidentiary hearing and the hearing is less than 30 days, the notice shall contain the deadline for intervention.

The Committee's October 31, 2016 deadline for filing a petition to intervene is clearly set forth in the Committee's October 21, 2016 Notice of Prehearing Conference and Evidentiary Hearing, Scheduling Order, and Further Orders ("October 21 Order"), as well as in section 1211.7(b). (TN# 214127.) Petitioners argue that their Petition is timely because it is filed before the second prehearing conference, scheduled for December 21, 2016, then cite to section 1211.7 of the CEC Siting Regulations as support. Petitioners' argument lacks merit. Petitioners fail to acknowledge the time period for petitions to intervene set forth in Section 1211.7(b). The Committee's Orders in this proceeding set the intervention deadline as October 31, 2016 (and previously August 29, 2016 and week of June 13, 2016). (TN#s 214127, 212210, 210666.) Thus, the deadline to file a timely petition to intervene has passed. (TN# 214127.)

### B. Petitioners Fail to Demonstrate Good Cause Supporting the Late-Filed Petition

Any petition filed after the deadline specified in section 1211.7(b) may only be granted upon a showing of good cause by the petitioner. (20 Cal. Code Regs. § 1211.7(d) (emphasis added).) Thus, Petitioners must demonstrate good cause for intervening at this late stage of the proceedings- on the eve of hearing. Petitioners have failed to meet this burden.

Petitioners have been well-informed about the Amended HBEP PTA proceeding. The PTA was filed in September 2015, less than one year after the CEC adopted a Final Decision on

the original Licensed HBEP Application for Certification (that was originally filed in 2012). Petitioners cite three reasons that they argue demonstrate good cause for intervention on the eve of hearing. Project Owner addresses each of the three reasons separately below. Each lacks merit and Petitioners fail to meet their burden of showing good cause to intervene in these proceedings.

**1. Petitioners Are Not Raising New Issues That Have Not Already Been Addressed**

Petitioners first argue that good cause exists because “the Energy Commission wants and actively cultivates public participation which 2HT will provide” and “[i]t is only when 2HT believes it can assist the process by voicing issues it has not seen raised that it seeks to intervene.” (Emphasis added.) Petitioners fail to elaborate on what issues have not been previously raised that it would like to voice.<sup>2</sup> Petitioners are correct – the Energy Commission does actively cultivate public participation in PTA proceedings. However, to date Petitioners have failed to participate even by filing or stating public comments about the project. Although the Petition lacks good cause, Petitioners have every right to participate in these proceedings as a member of the public.

**2. Petitioners Claim That Their Decision to Intervene Is Based Upon FSA Part 2, but Fail to Acknowledge that Staff’s Preliminary Staff Assessment Addressing All Subject Areas Was Issued in June 2016 and FSA Part 1 Was Published on October 17, 2016**

Petitioners next argue that good cause exists because their decision to intervene was not made until they saw Final Staff Assessment (“FSA”) Part 2 on December 9, 2016. Petitioners

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<sup>2</sup> Further, the Prehearing Conference Statement filed by Petitioners immediately after the docketing of the Petition to Intervene (which is not an exhibit to or incorporated by reference in the Petition) does not raise any issues that have not been fully addressed in these proceedings.

fail to acknowledge that the bulk of the Staff Assessment<sup>3</sup> was published on October 17, 2016, the Preliminary Staff Assessment was filed in June 2016, and Project Owner's PTA was filed over fifteen (15) months ago, in early September 2015. Petitioners' claim that the publication and length of FSA Part 2 demonstrates good cause lacks merit.

Petitioners have been aware of this proceeding at least since early July- if not earlier- when they filed comments on the Preliminary Determination of Compliance with the South Coast Air Quality Management District. Further, the scope of the Petitioners Prehearing Conference Statement indicates that the Petitioners seek to intervene for issues that go beyond the Air Quality and Public Health issues contained in FSA Part 2 – issues that were addressed at length in FSA Part 1, which was published on October 17, 2016. Since the October 21, 2016 Committee Order, the filing deadline for Petitions to Intervene has been October 31, 2016. Petitioners could have petitioned to intervene well prior to or even after Staff's publication of FSA Part 1, and had ample time to do so before the intervention deadline. There is no excuse for waiting until three business days before the evidentiary hearing to now seek party status in this proceeding.

**3. The Fact That No Other Intervenors Are Involved In This Proceeding Does Not Constitute Good Cause**

Lastly, Petitioners claim that “because there are no other non-profits or public intervenors there is good cause to let 2HT into the proceeding.” The absence of intervenors or the amount of public involvement in a PTA proceeding is not a reason to grant Petitioners' late-filed Petition.

Petitioners' state:

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<sup>3</sup> See FN2, *supra*. The scope of issues set forth in Petitioners' Prehearing Conference Statement goes well beyond the issues addressed in FSA Part 2 (air quality and public health), and addresses issues analyzed at length in the Preliminary Staff Assessment published in June 2016 and the FSA Part 1 published on October 17, 2016.

“[a]t the last prehearing conference no members of the public spoke. And although the Public Advisor does a great job trying to bring in citizens to participate -- it isn't happening in this case. 2HT can bridge that gap. 2HT actively participates and actively informs the affected community in order to increase civic participation and draw attention to important issues.”

Mr. Simpson was in attendance at the November 14, 2016 Prehearing Conference.

(Declaration of Stephen O’Kane In Opposition to Motions of Helping Hand Tools and Robert Simpson (“O’Kane Decl.”), ¶ 3, attached hereto.) The Public Advisor was present at the Prehearing Conference and was available to facilitate public participation in the proceeding.

(*Id.*) The Hearing Officer also provided all members of the public the opportunity to speak yet Mr. Simpson chose not to do so. (TN# 214601.) Thus, Mr. Simpson himself has had the opportunity to participate in these proceedings and has chosen not to do so. A lack of comments from the public at one prehearing conference or a lack of intervenors in a proceeding is not a basis for demonstrating good cause exists to allow Petitioners to become a party to the proceeding on the eve of the Evidentiary Hearing.

Thus, it is obvious that Petitioners’ have been aware of this proceeding for months and have had ample access to all documents related to this proceeding. Petitioners clearly lack good cause for their late-filed Petition. FSA Part 1 was published on October 17, 2016, FSA Part 2 was published on December 9, 2016, and there is no regulatory public comment period after publication of an FSA. Once the FSA is issued, the Evidentiary Hearing phase begins. Project Owner timely provided its comments on FSA Part 1 and FSA Part 2 in the form of opening testimony in adherence to the filing deadlines set forth in the Committee Orders.<sup>4</sup>

### **B. The Presiding Member Has Discretion To Deny the Petition**

Although Title 20, California Code of Regulations, section 1211.7(d) states that the

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<sup>4</sup> Project Owner is fully committed to maintaining the December 21, 2016 evidentiary hearing date. All relevant pre-hearing filings leading up to the hearing have been filed by the parties.

“presiding member **may** grant leave to intervene...,” section 1211.7(d) does not compel the presiding member or the Commission to grant every Petition to Intervene submitted in every proceeding. (20 Cal. Code Regs. §1211.7(d) (emphasis added).) In fact, for late-filed petitions, the Petition may only be granted if good cause is shown, and even if good cause exists (which it does not, as set forth above), the Presiding Member still has discretion to deny the Petition.

Thus, the Presiding Member has the express discretion pursuant to section 1211.7 to deny the Petition and for the reasons set forth herein, should deny the Petition in full.

### **III. CONCLUSION**

It is clear that Petitioners have reviewed the project documents and have been aware of the project for months, yet Petitioners failed to timely file a Petition to Intervene. In addition, Petitioners fail to provide good cause for its late-filed Petition. For the reasons set forth herein, the Petition should be DENIED.

Date: December 19, 2016

STOEL RIVES LLP



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AES HUNTINGTON BEACH ENERGY, LLC

**Declaration of  
STEPHEN O'KANE  
In Opposition to Motions of Helping Hand Tools and Robert Simpson  
Huntington Beach Energy Project  
(12-AFC-02C)**

I, **Stephen O'Kane**, declare as follows:

1. I am presently employed by the AES Corporation as the Vice-President of AES Huntington Beach Energy, LLC ("Project Owner"), the owner of the Huntington Beach Energy Project ("HBEP").
2. I attended the Public Workshop on the Preliminary Staff Assessment for Amended HBEP, held in Huntington Beach on July 12, 2016. Members of the public attended the Public Workshop and provided oral comments at the workshop.
3. I attended the Prehearing Conference for Amended HBEP held on November 14, 2016 in Sacramento, California. Mr. Robert Simpson also attended the Prehearing Conference on November 14, 2016, but did not make public comment. The Public Advisor attended the Prehearing Conference and was available to facilitate public participation in the proceeding. Mr. Simpson approached me after the Prehearing Conference and provided me copies of federal court papers related to a separate matter. I had met Mr. Simpson prior to this date and recognize him.
4. On at least two occasions since 2014, Mr. Simpson has sent me emails stating that he intended to commence activities to increase public awareness of the project in Huntington Beach.
5. I am personally familiar with the facts and conclusions related in the testimony presented by me and, if called as a witness, could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 12/19/16

  
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Stephen O'Kane