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2017 04-07 Supreme Court Petition for Review

2017 04-07 Supreme Court Petition for Review

Additional submitted attachment is included below.

No. _____

**IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA**

Helping Hand Tools and Robert Simpson,
Petitioners,

v.

Energy Resources Conservation and Development Commission,
Respondent.

Delta Energy Center, LLC,

Real Party-In-Interest

**PETITION FOR REVIEW
UNDER PUBLIC RESOURCES CODE SECTION 25531**

*On Review of the California Energy Resources Conservation and Development
Commission's March 8, 2016 Order Approving Petition to Amend,
Docket No. 98-AFC-3C*

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I. ISSUES PRESENTED

1. Did the California Energy Commission fail to regularly pursue its authority when it approved a petition to amend under California Code Regulations, Title 20, section 1769(a)(3) without providing the public a 14-day comment period, and without following a formal amendment process?
2. Did the California Energy Commission fail to regularly pursue its authority when it did not to refer significant issues of potential environmental impacts to other local, state, and federal agencies before approving a petition to amend under California Code Regulations, Title 20, section 1769(a)(3)?
3. Did the Energy Commission violate Petitioner's California Constitution due process rights when it approved the Delta Energy Center's petition to amend under California Code Regulations, Title 20, section 1769(a)(3) without a formal amendment process, and without considering substantial evidence contradicting the Commission staff's findings?
4. Did the Energy Commission violate Petitioner's United States Constitution due process rights when it approved the Delta Energy Center's petition to amend under California Code Regulations, Title 20, section 1769(a)(3) without a formal amendment process, and without considering substantial evidence contradicting the Commission staff's findings?

II. INTRODUCTION

This case is about the California Energy Conservation and Development Commission's ("Energy Commission") decision to grant an amendment to the Delta Energy Center power plant ("DEC") certification. The Energy Commission originally certified DEC, an 880 MW gas-fired power plant, in 2000. On January 29, 2017, a large fire broke out at DEC during a mechanical malfunction, rendering the facility's steam generator inoperable. The root cause of the fire is still unknown. Nevertheless, DEC's owner petitioned to amend its permit so that it may continue to operate without the steam generator for an indeterminate amount of time, but at least through the summer of 2017. Without using the steam generator during the time, the power plant will have to operate in a far less efficient "simple cycle" mode, as opposed to the more efficient "combined cycle" mode for which it was originally certified.

Delta LLC's petition to amend contained almost no analysis of the various factors that are required for power plant certification under the Warren-Alquist Act, Public Resources Code §25500 et seq. and relate regulations. —such as the amendment's potential impacts on air quality, biological resources, and worker safety and fire protection. The petition summarily concluded that the amendment would change none of the facility's environmental impacts or original grounds for certification, and would violate no laws. Energy Commission's staff analyzed the

proposed “simple cycle” operation and also provided very little discussion and concluded there would be no environmental impacts or potential violations of law.

Energy Commissioners then quickly approved the amendment without providing the public adequate opportunity to comment. The Commission expressly approved the amendment under California Code Regulations, Title 20, section 1769(a)(3), but failed to provide the requisite 14-day public comment period, failed to follow a formal amendment process, and failed to base its decision on substantial evidence, as required under section 1769(a)(3). Petitioners offered extensive evidence and arguments why the amendment should not have been approved, but the Commission did not consider it. Accordingly, the Energy Commission failed to “regularly pursue[] its authority,” including by violating Petitioners’ constitutional due process rights. (Cal. Pub. Res. Code §25531(b).)

III. WHY REVIEW SHOULD BE GRANTED

The Delta Energy Center (“DEC”) in Pittsburg, California is California’s second most pollution-emitting power plant in California. On March 8, 2017, the California Energy approved an amendment that allows the DEC to operate in and **even less efficient mode, for an indeterminate amount of time.**

This Court should grant for three reasons: first, the Energy Commission did not “regularly pursue[] its authority” when it failed to refer significant issues of

potential environmental impacts to other local, state, and federal agencies before approving the amendment, and failed to give members of the public adequate opportunity to comment. (Pub. Res. Code § 25531(b).) Second, the Energy Commission violated Petitioners' due process rights under the California Constitution and United States Constitution when it approved the Delta Energy Center's petition to amend under an expedited review, and without considering substantial evidence presented by Petitioners that contradicted the Commission staff's findings. (*Id.*) Third, this court has original jurisdiction, because the California Court of Appeals lacks jurisdiction this Court has authority to hear the case. California Rules of Court Rule 8.500(b)(2).

IV. FACTUAL AND PROCEDURAL HISTORY

A. The Facts

Petitioner HELPING HAND TOOLS is a California non-profit organization that has members throughout California. HELPING HAND TOOLS aims to preserve and protect the environment from human harm, primarily through civic participation and public comment. HELPING HAND TOOLS has a long track record of commenting on and improving power plant siting decisions throughout California, such as with the Russell City Energy Center, Avenal Energy Center,

Marsh Landing Energy Center, Carlsbad Energy Center, Palmdale Hybrid Project, and many others.

Petitioner ROBERT SIMPSON is an individual and resident of California. He is the Executive Director of HELPING HAND TOOLS. He and Helping Hand member Bob Sarvey both commented at the March 8, 2017 Energy Commission's business meeting regarding the amendment for the Delta Energy Center Power Plant Project ("DEC").

Respondent CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION ("Energy Commission") is a state agency under California Natural Resources Agency, and was created pursuant to California Public Resources Code § 25200 *et seq.* The Energy Commission is responsible for certification and compliance of thermal power plants 50 megawatts (MW) and larger, including all project-related facilities in California, including the Delta Energy Center Power Plant Project.

Real party in Interest DELTA ENERGY CENTER LLC ("Delta LLC") owns and operates the Delta Energy Center power plant ("DEC") in Pittsburg, California. [Applicant's Petition for Temporary Safety Modification TN # 216134.]¹ Delta Energy Center is an 880 MW combined cycle natural gas fired

¹ "TN" numbers refer to documents on the Energy Commission's dockets for the Delta Energy Center Power Plant Project, available at <http://www.energy.ca.gov/sitingcases/delta/index.html>. They contain the entirety

power and it is the second highest greenhouse gas emitting power plant in the state.
TN # 216430 at page 17.

On Sunday, January 29, 2017 at approximately 3:42 PM, there was a mechanical malfunction that resulted in an inferno that engulfed a large part of the plant and created significant damage to the facility. As of the filing of this Petition for Review, neither Delta LLC or the Energy Commission know the root cause of the fire.

B. Procedural History

On February 21, 2017, Delta LLC filed for an “Applicant’s Petition for Temporary Safety Modifications” under California Code Regulation, title 20, section 1769. Although titled “Petition for Temporary Safety Modification” the petition’s main request was authorization to run the power plant in simple-cycle mode instead of the combined-cycle it was originally permitted for. The petition stated that the amendment was needed while repairs were made to the steam generator, but no deadline was given for the repairs.

Despite this significant change in operational mode, Delta LLC claimed, “The proposed project revisions are consistent with all applicable LORS. This

of the administrative record for this adjudication.

Petition is not based on new information that changes or undermines any basis for the Final Decision. The assumptions, rationale, findings, and other basis of the Commission Decision for DEC are still applicable to the project, as temporarily modified.” And regarding potential environmental impacts, Delta LLC dispensed with fourteen environmental disciplines (such as air quality, public health, socioeconomics, and fire protection) within three pages, concluding that operating the plant in simple cycle mode for an indefinite amount of time would have no significant environmental impacts. TN # 216134 at 3-1 to 3-3. Delta LLC did not list any of the experts who prepared the document nor does the Petition provide any evidence for its conclusions.

Just three days later, the Energy Commission staff docketed a “Staff Analysis of the Petition to Amend Commission Decision - Delta Energy Center.” The Staff report also concluded, with very little analysis and discussion, that the proposed amendment would cause no significant environmental impacts or LORS violations. TN # 216227. Staff did not consider: the potential cumulative effects on air quality of running DEC in simple cycle mode; whether modifying DEC to run simple cycle mode would violate Clean Air Act permit requirements, or require further analysis under the Clean Air Act; whether worker safety and fire protection conditions to certification required updating in light of the recent fire; or potential impacts of the higher-temperature thermal plume on birds and aircraft. Staff did

acknowledge that the community surrounding DEC now is an environmental justice population—unlike when the facility was certified in 2000—but concluded this did not require any changes to socioeconomic certification conditions.

On March 6, 2017, Keith Casey, Vice President of Market and Infrastructure Development for the California Independent System Operator Corporation (“CAISO”) submitted a one-page letter stating simply, without any supporting facts: “The Delta Energy Center is needed for reliability for Summer 2017 and the ISO supports approval of an order granting the Petition to Amend to make temporary modifications to the steam turbine condenser to run the Delta Energy Center facility in simple-cycle mode.” TN # 216250

Petitioners Simpson and Sarvey have submitted extensive comment objecting to the amendment. On March 7, 2016, before the Commission’s meeting, Mr. Sarvey, a member of Helping Hand Tools and power plant expert, submitted CAISO’s Summer 2016 report detailing Summer Loads & Resources Assessment from that summer as evidence that DEC was not needed for reliability. (TN # 216427.) Mr. Sarvey also submitted an audit of DEC by the California Public Utilities Commission detailing unsafe conditions. (TN # 216428.)

Mr. Simpson, on behalf of himself and Helping Hand Tools, also objected to the proposed amendment and requested “a formal amendment proceeding and evidentiary hearing.” (TN # 216340.) Mr. Simpson included detailed argument

about reliability need, environmental justice, numerous environmental impacts, and worker safety. Mr. Simpson proposed specific new conditions of certification for DEC to address these issues. Included in that comment is the conclusion that this amendment is unnecessary, because this zone of California does not require the energy the DEC generates. The comment explains that CAISO, the entity that controls California's power grid, predicts an abundance of reserve electricity in the zone around the Delta Energy Center. CAISO predicts that the area will have around 21.3% and 25.6% operating reserve margin when they are required to only have a 15% reserve. *Id.* at 15-16. The comment also explains that another nearby peaker power plant (a power plant that is only used during "peak hours") was only used 1% of its permitted run time because of lack of need. *Id.*

Mr. Sarvey and Mr. Simpson also objected that approval of the proposed DEC amendment was premature until safety issues at the facilities were resolved. Explained Mr. Sarvey, "Calpine has a long history of accidents at its power plants," including numerous incidents at Calpine (the parent Company of Delta Energy LLC) facilities

On March 8, 2017—just twelve days after Energy Commission staff issued its analysis of the petition—the Energy Commission approved the proposed amendment, without change, at a Commission business meeting. Approval expressly was made under 20 CCR 1769(a)(3), not 20 CCR 1769(a)(2). Mr.

Sarvey and Mr. Simpson gave oral comments at the proceeding, but were limited to 2 minutes each. Mr. Simpson explained, once again,

there is nothing in the amendment that says this is a temporary amendment. So Calpine could decide that, we're just going to run it forever in simple cycle.²

When the Commissioners asked Commission staff about this issue, Commission staff responded,

This is not a permanent amendment. You know, because the investigation is ongoing and we don't know the root cause, right now our best guess is possibly a year. But we will revisit this when the investigations further along. And if this is becoming a permanent situation we will insist that an amendment be filed.³

The Order Approving Petition to Amend does not contain any language concerning the length of time that DEC may operate in less-efficient simple-cycle mode. [TN # 216644]

Mr. Sarvey also raised the issue that title 20, Section 1769 of the California Code of Regulations governing certification amendments specifically requires a 14-day public comment period, whereas the Commission approved this amendment within only twelve days. Commission staff responded:

MS. DeCARLO: Lisa DeCarlo, Energy Commission Staff Counsel. With regard to the 14-day requirement mentioned by Mr. Sarvey, that's actually not applicable in this instance. That's under section 1769(a)(2) of our Regulations, and we are not proceeding the

² Transcript of the March 8th meeting, page 16 line 24-25 and page 17 line 1-2.

³ *Id.* at pg. 26 lines 10-16

amendment through that section.

We're processing it through section 1769(a)(3), which is why we're here before you asking for approval. So the 14-day requirement does not apply in this instance.

COMMISSIONER DOUGLAS: And to be more specific, Ms. DeCarlo, maybe you could explain the difference between these two sections.

MS. DeCARLO: Sure. 1769(a)(2) is where staff is allowed to make its determination, sua sponte, on its own after its own investigation, its own analysis, without going to the Commission for approval. So then that's why a 14-day notice is required to allow parties sufficient time, interested public, to review staff's analysis and file an objection to a full if they so chose, in which case it would bump it to a full Commission decision.

Whereas, 1769(a)(3) just goes straight to a Commission decision, either on staff's own determination that this is warranted, or as a result of an objection under 1769(a)(2).⁴

Without addressing any of the substantive arguments and evidence that Petitioners presented before and during the March 8, 2017 meeting, the Energy Commission approved the petition to amend at that meeting, adopting the staff's recommendations, and made the following findings (TN# 216644, attached hereto as "Attachment A"):

Based on staff's analysis, the Energy Commission concludes that the proposed modifications will not result in any significant impacts to public health and safety, or to the environment. The Energy Commission finds that:

⁴ Transcript of 03/08/2017 Business Meeting, 17-BUSMTG-01, TN#: 216643, 18:5 – 19:3

- The petition meets all the filing criteria of Title 20, section 1769 (a), of the California Code of Regulations, concerning post-certification project modifications;
- The modification will not change the findings in the Energy Commission's Final Decision, pursuant to Title 20, section 1755, of the California Code of Regulations;
- The project will remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code, section 25525;
- The modifications will be beneficial because the changes will allow the facility to return to service to support the California Independent System Operator in resource planning for Summer 2017;
- There has been a substantial change in circumstances since the Energy Commission certification, justifying the modifications, the modifications are based on information that was not available to the parties prior to Energy Commission certification in that modifications are proposed as a result of the fire that occurred on January 29, 2017, which rendered all three units of the facility inoperable.

On information and belief, Energy Commission never referred this amendment petition to any other local, state, or federal agencies that have jurisdiction over the environmental and/or technical areas potentially impacted by the amendment.

On information and belief, Energy Commission conducted no outreach to the environmental justice community surrounding DEC to inform and engage them in the petition to amend process.

V. LEGAL DISCUSSION

The power plant certification procedures under the Warren-Alquist Act, Public Resources Code section 25000 *et seq.*, are a California Environmental Quality Act (“CEQA”)-equivalent programmatic EIR, meaning that its procedures are intended to meet the same purposes as CEQA. (*See* Public Resources Code §§ 21080.5, 25519(c), 25541.5.)

Energy Commission, as the lead agency in certification decisions, is required to consult with other local, state, and federal agencies to ensure compliance with all laws, ordinances, regulations, and statutes (“LORS”). (*See* Public Resources Code § 25519(f).)

Also like in CEQA, Energy Commission, when determining EIR-equivalent documents such as an application for certification or petition to amend that certification, must encourage public participation through opportunity to comment on proposed power plant certifications, especially when an environmental justice community may be affected. Final decisions must be based on substantial evidence in light of the whole record.

Energy Commission violated these requirements when it interpreted 20 CCR 1769(a)(3) as permitting only a 12-day public comment period instead of 14 days. The Commission also did not proceed under the “formal amendment” process required under 20 CCR 1769(a)(3), instead finding that an amendment petition

under “1769(a)(3) just goes straight to a Commission decision.”⁵ These interpretations of the only regulation governing amendments to certification (Section 1769, Title 20 of the California Code of Regulations) constituted clear errors of law.

Section 1769, Title 20 of the California Code of Regulations, titled “Post Certification Amendments and Changes,” offers two ways the Commission may approve an amendment to a certified project’s “project design, operation, or performance requirements”. Petitions to amend may be approved by Commission staff under Section 1769(a)(2), or by a decision of the Commission after formal amendment process under Section 1769(a)(3).

Under 1769(a)(2), the Commission’s staff may (assuming the petition also contains all information required under 1769(a)) approve the amendment if:

staff determines that there is no possibility that the modifications may have a significant effect on the environment, and if the modifications will not result in a change or deletion of a condition adopted by the commission in the final decision or make changes that would cause the project not to comply with any applicable Laws ordinances, regulations, or standards.

(Section 1769(a)(2).) In this case, the staff’s decision is final unless any person “file[s] an objection to staff’s determination within 14 days of service on the grounds that the modification does not meet the criteria in this subsection.”

⁵ Transcript of 03/08/2017 Business Meeting, 17-BUSMTG-01, TN#: 216643, 18:5 – 19:3.

Under section 1769(a)(3), “if a person objects to a staff determination that a modification does meet the criteria in subsection (a)(2)” (or if “staff determines that a modification does not meet the criteria in subsection (a)(2),” which does not apply here), then “the petition must be processed as a formal amendment to the decision and must be approved by the full commission at a noticed business meeting or hearing.” Although section 1769(a)(3) does not contain the words “14 days,” it clearly incorporates this 14-day objection period of section 1769(a)(2), specifically referring to it and also stating that the 1769(a)(3) is triggered “if a person objects to a staff determination” as provided under 1769(a)(2).

While section 1769 is not a model of clarity, Energy Commission’s interpretation of it clearly errs a matter of plain meaning and basic statutory interpretation. Under the Commission’s interpretation, the Commission would have no opportunity to consult with other agencies about potentially significant environmental impacts; indeed, in this case it did not. Furthermore, under the Commission’s interpretation, members of the public could potentially be afforded *no opportunity to object or event comment on* a petition to amend if the petition is decided by the Commission under 1769(a)(3), as opposed to if decided by staff 1769(a)(2).

Members of the public must be afforded at least 14 days after service of the Commission staff’s determination to object. First, it would make no sense to

provide members of the public *less* time to comment under 1769(a)(3) than under 1769(a)(2). Section 1769(a)(3) is triggered when there is a dispute (or potential dispute) over whether the amendment would cause unmitigated significant environmental impacts, impact LORS compliance, but beneficial to the public, applicant or intervenors, and whether there has been substantial change in circumstances justifying the amendment, or the amendment is based in information not known and could not have been known prior to certification. (See 1769(a)(3)(A)-(D).) That is a lot of information to review within 14 days. If anything the (a)(3) public comment period should be longer than the (a)(2) period, not the other way around.

Second, statutes and regulations governing power plant siting and certification consistently require adequate opportunities for public participation. It would be entirely inconsistent with this CEQA-equivalent scheme for petitions to amend to evade this basic requirement. “The commission hearings shall provide a reasonable opportunity for the public and all parties to the [AFC] proceeding to comment upon the application and the commission staff assessment and shall provide the equivalent opportunity for comment as required pursuant to Division 13 (commencing with Section 21000).” Cal. Pub. Res. Code § 25521. (*See also* Pub. Res. Code § 25543: legislature intends for “public participation in the siting process”; Pub. Res. Code § 25540.5: input and review by members of the public

required; Cal. Code Regs. tit. 20, § 1742(c): “Staff’s preliminary environmental assessment shall be subject to at least a 30 day public comment period or such additional time as required by the presiding member.”; Cal. Code Regs. tit. 20, § 1770: “If a licensee or any other person objects to the modification, he or she shall be entitled to a public hearing on the matter before the Commission.”)

Finally, section 1769(b)(3) requires a “formal amendment process.”

Although not defined, at a minimum this should mean adequate opportunity for the public to comment after all relevant information is available—such as how future accidents will be prevented, and what is the basis for CAISO’s recommendation that there is need for DEC in simple cycle. The Commission’s decision approving modification should be withdrawn and a full opportunity (at least 14 days) afforded for public comment.

The Commission failure to follow a formal amendment procedure, as required under section 1769(a)(3) also violated Petitioners’ constitutional rights. Article I, section 7(a) of the California Constitution states that “[a] person may not be deprived of life, liberty, or property without due process of law....” This Court has interpreted that section to “hold that application of the clauses must be determined in the context of the individual’s due process liberty interest in freedom from arbitrary adjudicative procedures. Thus, when a person is deprived of a

statutorily conferred benefit, due process analysis must start.” *People v. Ramirez*, (1979) 25 Cal.3d 260, 263–64 (emphasis added).

In this case, the statutorily conferred benefit is the right to comment on petitions to amend, and to have the comments considered by the Energy Commission. This benefit is created by the Energy Commission’s own statutes and regulations. For example, Public Resources Code section 25521 states: “The commission hearings shall provide a reasonable opportunity for the public and all parties to the [AFC] proceeding to comment upon the application and the commission staff assessment and shall provide the equivalent opportunity for comment as required pursuant to Division 13 (commencing with Section 21000).” (*See also* Pub. Res. Code § 25543: legislature intends for “public participation in the siting process”; Pub. Res. Code § 25540.5: input and review by members of the public required; Cal. Code Regs. tit. 20, § 1742(c): “Staff’s preliminary environmental assessment shall be subject to at least a 30 day public comment period or such additional time as required by the presiding member.”; Cal. Code Regs. tit. 20, § 1770: “If a licensee or any other person objects to the modification, he or she shall be entitled to a public hearing on the matter before the Commission.”). Additionally, a CEQA-equivalent document must have “sufficient time to review and comment on the filing” (California Public Resources Code §21080.5(d)(2)(vi)), and must be available “for a reasonable time” for review and

comment by other public agencies and the general public (California Public Resources Code §21080.5(d)(3)(ii)).

Because, there is a statutorily conferred benefit, the next step in the due process analysis is the four part test: (1) the individual's private interest, (2) the risk of error in the given procedure and the value of a substituted procedure, (3) the dignify interest in providing notice and a hearing, and (4) the governments interest in fiscal and administrative burdens. (*Saleeby v. State Bar of Calif.*, (1985) 39 Cal 3d. 547, 565.)

First, the private interest is the right to be heard and to be addressed in an important regulatory decision that affects the health and safety of millions of Americans. Public comments are an essential part of the environmental review and without them the individual as well as the State suffer.

Second, the risk of error in the given procedure is quite substantial. Without addressing public comments, the Energy Commission is bypassing an essential tool for adequately addressing environmental impacts. Additionally, the procedure, if applied correctly, would be sufficient to satisfy due process, but, in this case, it was not.

The third factory is the dignity factor or the chance for a party to adequately tell their story. In this case, petitioner did not get that chance. Not only was the

comment period shortened and rushed, it was also never responded to. There is no dignity in being brushed aside.

The last factor is the state's interest. The state does have an interest in keeping costs down and not overburdening themselves, but in this case applying the proper procedure would not be much of a burden. The Energy Commission routinely deals with permits and modifications that take years to complete – yet in this case the entire process was done in weeks and the comment period was only 12 days. Therefore, it is an indefensible position to argue that the state would somehow be burdened by an appropriate comment period and some response to comments.

For these same reasons the Energy Commission's procedures and decision to approve the Delta Energy Center's petition to amend also violated the due process provisions of the United States Constitution, including that no person shall "be deprived of life, liberty, or property, without due Process of law." (U.S. Const. amend. V, see also amend XIV.) There exists a two-Step Approach to procedural due process analysis. The "first asks whether there exists a [life,] liberty or property interest which has been interfered with by the state; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." (*Ky. Dep't of Corr. v. Thompson*, (1989) 490 U.S. 454, 460.) In this case, Petitioners' rights to comment on Energy Commission proceedings regarding

a highly-polluting emission source were interfered. The Commission's interpretation of its amendment procedures section 1768, title 20 of the California Code of Regulations was constitutionally insufficient.

VI. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant review of the Energy Commission's March 8, 2017 Order Approving Petition to Amend.

DATED: April 7, 2017

Respectfully submitted,

By: 

Andrew Kingsdale
Attorneys for Petitioner

CERTIFICATE OF WORD COUNT

The foregoing Petition for Review contains 4408 words (excluding tables and this certificate). In preparing this certificate, I have relied on a word count generated by Microsoft Office Word version 15.32.

Executed on April 7, 2017, in San Francisco, California.



Andrew Kingsdale

ATTACHMENT 1

(California Energy Commission's Order Approving Petition to Amend,
March 8, 2017)

DOCKETED

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Project Title:	Delta Energy Center Compliance
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STATE OF CALIFORNIA

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Docket No. 98-AFC-03C

Delta Energy Center, LLC

ORDER APPROVING PETITION TO AMEND

On February 22, 2017, Delta Energy Center LLC, the owner/operator of the Delta Energy Center, submitted a petition requesting to modify the Delta Energy Center to make temporary modifications to the steam turbine condenser to run the facility in simple cycle mode. The modifications will allow the Delta Energy Center to continue repairs to the steam turbine while the facility returns to service in simple cycle mode to support the California Independent System Operator in resource planning for the summer of 2017. In simple cycle mode, Delta Energy Center would provide approximately 500 to 544 MW of capacity and voltage support to the applicable resource area.

On February 24, 2017, Energy Commission staff filed in the docket its analysis of the petition and concluded that there would be no additional significant environmental impacts associated with the proposed changes; the facility will remain in compliance with all laws, ordinances, regulations and standards; the changes will be beneficial by enabling the Delta Energy Center to support the California Independent System Operator in resource planning for the summer of 2017; and there has been a substantial change in circumstances since the Commission's certification justifying the changes.

STAFF RECOMMENDATION

Energy Commission staff reviewed the petition, concludes that it complies with the requirements of Title 20, section 1769 (a) of the California Code of Regulations, and recommends approval of Delta Energy Center, LLC's petition to modify the Delta Energy Center.

ENERGY COMMISSION FINDINGS

Based on staff's analysis, the Energy Commission concludes that the proposed modifications will not result in any significant impacts to public health and safety, or to the environment. The Energy Commission finds that:

- The petition meets all the filing criteria of Title 20, section 1769 (a), of the California Code of Regulations, concerning post-certification project modifications;
- The modification will not change the findings in the Energy Commission's Final Decision, pursuant to Title 20, section 1755, of the California Code of Regulations;
- The project will remain in compliance with all applicable laws, ordinances, regulations, and standards, subject to the provisions of Public Resources Code, section 25525;
- The modifications will be beneficial because the changes will allow the facility to return to service to support the California Independent System Operator in resource planning for Summer 2017;
- There has been a substantial change in circumstances since the Energy Commission certification, justifying the modifications, the modifications are based on information that was not available to the parties prior to Energy Commission certification in that modifications are proposed as a result of the fire that occurred on January 29, 2017, which rendered all three units of the facility inoperable.

CONCLUSION AND ORDER

The California Energy Commission hereby adopts staff's recommendation and approves the proposed project modifications to the Commission Decision for the Delta Energy Center requested in the Delta Energy Center's Petition for Temporary Safety Modifications. These modifications will not result in changes to Conditions of Certification.

IT IS SO ORDERED.

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 March 8, 2017.

AYE: Weisenmiller, Douglas, McAllister, Hochschild, Scott

NAY: None

ABSENT: None

ABSTAIN: None

Original Signed by

Cody Goldthrite
Secretariat