

## DOCKETED

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April 21, 2017

Chair Robert B. Weisenmiller  
Commissioner Karen Douglas  
Commissioner David Hochschild  
Commissioner Andrew McAllister  
Commissioner Janea A. Scott  
California Energy Commission  
1519 Ninth Street  
Sacramento, CA 95814-5512

RE: Docket No. 98-AFC-03C: Statement of Opposition of Delta Energy Center, LLC to Helping Hand Tools and Robert Simpson's Motion for Reconsideration of Commission's March 8, 2017 Order Approving Petition to Amend

Dear Commissioners:

On behalf of Delta Energy, LLC, the owner of the Delta Energy Center ("DEC"), we submit this statement of opposition to the *Motion for Reconsideration of Commission's March 28, 2017 Order Approving Petition to Amend* and *Rob Simpson Supplement to Motion for Reconsideration of Commission's March 8, 2017 Order Approving Petition to Amend Delta Energy Center, Motion to Compel Discovery, Motion to Sanction Chief Counsel Kourtney Vaccaro, Motion to Compel the Executive Director to Conduct Investigation, Petition to Intervene, Motion to Stay Amendment Approved on March 8 Until Supreme Court, Superior Court, and EPA/EAB Rule on Commission Actions, and Testimony of Rob Simpson* (collectively, the "HHT Motions") filed by Helping Hand Tools ("HHT") and Robert Simpson (collectively, the "Movants") on April 7, 2017.<sup>1</sup>

For the reasons set forth below, Delta Energy Center, LLC (the "Project Owner") supports the determination<sup>2</sup> that Movants are not authorized to submit the HHT Motions seeking reconsideration of the Commission's approval of the *Petition for Temporary Safety Modifications* (the "Amendment Petition")<sup>3</sup> filed by the Project Owner on February 21, 2017. The Project Owner opposes the HHT Motions, which are replete with false allegations and completely unsupported legal assertions regarding the DEC, its operations and its compliance

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<sup>1</sup> TN#: 216904, 216906.

<sup>2</sup> TN#: 217204.

<sup>3</sup> TN#: 216134.

with laws, ordinances, regulations, and standards (“LORS”).<sup>4</sup> The Project Owner reserves the right to file a subsequent response to any of the legal and factual assertions raised in the HHT Motions if required at a later time.

### **BACKGROUND**

The purpose of the Amendment Petition was to obtain approval for the installation of temporary safety modifications to the steam turbine condenser at the DEC. (Amendment Petition, p. 1.) The temporary safety modifications allow for continued operation of the DEC in steam bypass mode during the period needed for repairs following a mechanical event and resultant fire that occurred at the DEC on January 29, 2017. (Amendment Petition, pp. 1-2.) Notably, operation of the DEC in steam bypass mode is a mode of operation already in existence at the facility. (Amendment Petition, p. 2.) Following the completion of repairs, the equipment installed for the temporary safety modifications will be removed. (Amendment Petition, pp. 1-1, 2-1.) No modifications were proposed to any emissions emitting equipment. (Amendment Petition, p. 3-1.)

On February 24, 2017, Commission Staff published its independent analysis (“Staff Analysis”) of the Amendment Petition, finding that the Amendment Petition would not result in any new or additional unmitigated significant environmental impacts, that the DEC would remain in compliance with all applicable LORS, and that the changes would enable the DEC to support the California Independent System Operator (“CAISO”) in resource planning for the Summer 2017.<sup>5</sup> (Staff Analysis, p. 5.) The Staff Analysis provided notice that the Amendment Petition would be heard at the Commission’s March 8, 2017 Business Meeting, and that comments on the Staff Analysis could be submitted prior to the Business Meeting. (Staff Analysis, p. 5.) The Staff Analysis also advised that those seeking information on participating in the Commission’s review of the Amendment Petition could contact the Public Adviser for assistance. (Staff Analysis, p. 5.)

Also on February 24, 2017, the agenda for the Commission’s March 8, 2017 Business Meeting was published. The agenda included notice of the Commission’s intent to consider the Amendment Petition at the March 8, 2017 Business Meeting, which was identified as Item 3 on the agenda. (TN#: 216250.) The Commission Agenda was published more than ten days in advance of the meeting and contained a description of the items of business to be transacted or discussed in either open or closed session, in compliance with applicable law. (Cal. Govt. Code § 11125(a)-(b).) The Agenda for the March 8th Business Meeting was also made available on the Commission website and emailed to all interested parties on Friday, February 24, 2017. (TN# 216250.) Accordingly, the requirements of the California Government Code requirements were satisfied, and the Amendment Petition properly noticed.

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<sup>4</sup> Due to the substantial legal failings in Movants arguments and the determination that the Movants are not authorized to submit the HHT Motions, Project Owner does not respond to each of Movants’ incorrect legal assertions and false factual claims, and denies all of Movants’ factual allegations outright.

<sup>5</sup> TN#: 216227.

On February 28, 2017, Mr. Simpson contacted the Compliance Project Manager for the DEC (“CPM”) regarding the Amendment Petition. (TN#: 216430, pdf p. 8.)

On March 2, 2017, Mr. Simpson submitted a document to the CPM requesting, without citation to any legal authorities, an “informal investigation” of the January 29th incident at the DEC. CEC Staff confirmed, and Mr. Simpson acknowledged, that the Amendment Petition was to be considered by the Commission at the March 8<sup>th</sup> Business Meeting. (TN#: 216430, pdf pp. 1, 2, 5 and 6.) In his March 2nd submittal, Mr. Simpson also included a copy of an email to a representative of Calpine, dated February 27, 2017, noting that “We [HHT] should submit comments soon so that they may be considered at the March 8th CEC business meeting.” (*Id.*, pdf p. 6.)<sup>6</sup>

On March 6, 2017, the CAISO submitted comments on the Amendment Petition affirming that the DEC is needed for reliability for Summer 2017, and supporting approval of the Amendment Petition.<sup>7</sup>

On March 7, 2017, Mr. Simpson emailed the CPM requesting that the Amendment Petition be removed from the March 8th Business Meeting Agenda and requesting an update regarding his statements of inquiry. (TN#: 216430, pdf p. 4.) Mr. Simpson also informed the CPM that he intended to file comments on the Amendment Petition, in addition to a “formal complaint”, prior to the Business Meeting. (TN#: 216430, pdf p. 4.) The CPM informed Mr. Simpson that the Amendment Petition would remain on the March 8th Business Meeting Agenda. (TN#: 216430, pdf p. 3.) Subsequently, Mr. Simpson submitted comments on the Amendment Petition. (See, TN#: 216430.) Public comments were also submitted by Robert Sarvey on March 7, 2017.

On March 8, 2017, the Amendment Petition was heard at the Commission’s Business Meeting. Both Mr. Simpson and Mr. Sarvey attended in person, spoke, and were heard during the public comment portion for the item. (3/8 RT 11:20, 15:10.) The Commission then closed the public comment period, deliberated, and approved the matter by unanimous vote of 5-0 (the “March 8th Order”; see, 3/8 RT 23-27). The Movants did not seek intervenor status at any point in this proceeding prior to the Commission’s decision, despite their familiarity and experience with the Commission’s processes.<sup>8</sup>

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<sup>6</sup> Mr. Simpson also made several unsupported assertions that the DEC was not in compliance with the Commission’s Conditions of Certification for the facility. Notably, Mr. Simpson conceded that he had no factual basis for the statements in his filing (with the exception of his belief that the DEC lacked sufficient landscaping based on his purported “drive by examination of the facility”). (TN#: 216430, pdf p. 7.)

<sup>7</sup> TN#: 216398.

<sup>8</sup> TN#: 216910, pdf p. 5; TN # 216909, p. 10, Resume of Robert Sarvey. The Commission may take Official Notice of the numerous proceedings in which Movants have successfully petitioned to intervene.

**DISCUSSION**

Project Owner concurs with the determination that Movants, individually and collectively, lack standing to seek reconsideration. Reconsideration of a Commission decision or order may be ordered only upon the Commission's own motion or the filing of a petition by any party. (Pub. Resources Code § 25530; see also, 20 C.C.R. §§ 1201(b), 1201(o); emphasis added.) The term "party" is defined to mean any applicant, respondent, intervenor, and in some cases, Commission staff. (20 C.C.R. § 1201(o).) The Commission's process for intervening in an adjudicative proceeding is clear. Section 1211.7 of the Commission's regulations sets forth the process and the substantive pleading requirements for a petition to intervene in an adjudicative process. In this case, Movants did not intervene in the instant proceeding and do not allege, let alone demonstrate, that they are otherwise "parties" to a Commission proceeding. As a matter of law, the Movants lack of standing is fatal to the HHT Motions.

As a matter of fact, HHT Motions admit that the Movants lack standing as a party to the proceeding. Bundled in the caption of one of the several "motions" identified in the HHT Motions, is an untimely purported "PETITION TO INTERVENE". (TN# 216906, pdf p. 1.) The purported "petition to intervene" is not discernable from the jumbled filing, and certainly not presented with the information required by Section 1211.7 of the Commission's regulations. Movants' admission that they have not previously petitioned to intervene, is a tacit admission that they are not "parties" and, thus, lack standing to challenge approval of the Amendment. Movants' untimely inclusion of the phrase "Petition to Intervene" buried within the HHT Motions does not cure this legal defect.

**CONCLUSION**

The Project Owner supports the determination that the Movants are not authorized to seek reconsideration of the Commission's order approving the Amendment Petition. Even assuming that threshold requirements of party status were met, the haphazard filings fail to meet the substantive pleading requirements set forth in the Commission's regulations. Accordingly, the HHT Motions do not merit approval by the Commission under any circumstance.

Dated: April 21, 2017

Respectfully submitted,

By: 

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