

July 10, 2013

Chief Counsel
California Energy Commission
Dockets Unit, MS-4
Docket No. 07-AFC-1C
1516 Ninth Street
Sacramento, CA 95814-5512

California Energy Commission DOCKETED 07-AFC-1C TN # 71549 July 11, 2013

Re: Petition for reconsideration of a decision to extend the 5-year construction deadline for the Victorville 2 Power Plant Project

Dear Chief Counsel:

In compliance with California Code of Regulations Title 20, Section 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 evidentiary hearings, and their effects upon a substantive element of the decision.”*

I am an owner of parcel APN 0460-242-05 which has been identified by the City of Victorville as being in the center of the Victorville 2 Power Plant Project. On May 20, 2013, I filed a request with Project Compliance Manager Mary Dyas requesting that the CEC post-pone any hearing to consider extending the construction of Victorville 2 until the City of Victorville satisfies a Brown Act Complaint – Cure and Correct Letter that was filed with the City of Victorville on May 15, 2013. This letter to Project Compliance Manager Mary Dyas also references continued failed notice requirements pursuant to section 625(a)(1)(A) of the Public Utilities Code. The Brown Act Complaint – Cure and Correct Letter was attached to my letter of request to Project Compliance Manager Mary Dyas. (TN #70951)

The Brown Act Complaint – Cure and Correct Letter to the City of Victorville

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identifies a continued lack of transparency with Victorville 2 Power Plant Project and its associated financing. I believe the costs involved in financing another 5 years of developing Victorville 2 Power Plant Project should be held in open hearings and properly agendized so as to allow public participation.

On June 15, 2013, I mailed a *Request for Revocation of Certification and Associated Civil Penalties for the Victorville 2 Power Plant Project*. (TN #71337) This document identifies a litany of compliance violations which I believe are new to the California Energy Commission but were not disclosed by the City of Victorville despite the City's awareness. My intention was to appear at the hearing to offer testimony/evidence that was contrary to the **"good cause"** purported by the City of Victorville in its petition to extend construction.

On June 20, 2013, I learned from the City of Victorville's web page that a hearing was held at the CEC; my request to post-pone was denied and a decision was rendered to extend the 5-year construction deadline.

California Government Code Section 54960 provides injunctive, mandatory or declaratory relief in a Superior Court for Brown Act violations. But prior to seeking relief, the legislative body – in this case the City of Victorville and the Southern California Logistics Airport Authority – must first comply with section 54960.1(c)(2) of the California Government Code, *"Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure and correct or inform the demanding party in writing of its decision not to cure or correct the challenged action."*

I received no notice from the City of Victorville and/or the Southern California Logistics Airport Authority of its decision not to cure and correct. Pursuant to section 54960.1(c)(3) of the California Government Code, and absent receiving a written notice not to cure and correct, I am required to wait 30 days before I seek injunctive, mandatory or declaratory relief. At the conclusion of the 30 days, I have a 15 day window to seek said relief in Superior Court.

The California Energy Commission hearing on June 12, 2013, pre-empted my right to seek the relief found in the Brown Act to refute the **good clause** claim that Victorville cited in its petition to extend construction. No hearing should have

occurred prior to June 30th, 2013 which would essentially render the City of Victorville's petition for the 5-year extension moot due to notice deadline issues.

Victorville City Attorney DeBortnowsky's *opinion* letter dated May 30, 2013 addressed to the Victorville City Council and Southern California Logistics Airport Authority falls short in meeting the notification requirement of section 54960.1(c)(2) of the California Government Code. The Commission should also be aware the Victorville City Attorney's office has a history of contrary legal opinions including those involving the Securities Exchange Commission and the findings of the Riverside County Grand Jury both involving Victorville 2. Additional issues of concern are identified in my Request for Revocation of Certification and Associated Civil Penalties for the Victorville 2 Power Plant Project. (TN #71337)

I am of the opinion the California Energy Commission acted outside the calendar provisions of the Brown Act by holding a June 12th, 2013 hearing. In addition, my family members and I continue to be excluded from hearing notices as required by section 625(a)(1)(A) of the Public Utilities Code. (see attached Blake Roberts e-mail correspondence). This same issue was brought to the attention of Project Compliance Manager Dyas in 2009 & 2010. (see attached Mary Dyas e-mail correspondence)

How can I submit evidence for a hearing and/or appear at a hearing when I'm excluded from notice? Why isn't the Project Compliance Manager requiring the City of Victorville to comply with notice regulations? Were all property owners of the Victorville 2 Power Plant Project site excluded from participation or just us?

CONCLUSION

The above information satisfies the elements of California Code of Regulations Title 20, Section 1720 and warrants the *Commission on its own motion* to reconsider its decision.

Thank you for your consideration.

Robert Landwehr
27961 Celia Road
Murrieta, CA 92563



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Victorville 2 Power Plant

From: **BOB LANDWEHR** (boblandwehr@msn.com)
Sent: Thu 6/27/13 10:35 AM
To: publicadviser@energy.ca.gov (publicadviser@energy.ca.gov)

Good Morning Mr. Blake Roberts:

First, thank you for returning my phone call yesterday afternoon. Secondly, thanks for allowing me to vent my frustration over the continuing lack of notice from both the City of Victorville and the CEC. Again, I find it difficult to believe that the continuing lack of notice for my family and/or I to participate in CEC hearings is related to some type of clerical error.

In 2009 and 2010 I exchanged e-mail correspondence with Project Compliance Manager Dyas concerning notice and specifically the Victorville 2 mailing list. On May 8, 2013 I received the "Victorville 2 Mailing List" from Suzy Gutierrez at the CEC (Log #70186). My brother's name and address is listed next to our parcel number (046024205). In my request for continuance to Project Compliance Manager Dyas on May 20, 2013, I again address notice issues in the second and third paragraphs of that request. **None of my family members or I received any notice about a June 12 hearing date.** In addition, the calendar of the Victorville 2 Hybrid Power Project on the CEC web page has consistently stated, "There are no upcoming events available".

Upon review of the June 12, 2013 transcripts, I learned, "*Staff concludes Mr. Landwehr's issues with the City are unrelated to the Energy Commission's proceedings and therefore there is no justification to post-pone action by the Commission...*" Why did I not at least receive a response from the CEC that my request for continuance was denied?

Besides the Brown Act and notice issue that I address; the Securities Exchange Commission has a little issue of fraud with the City of Victorville concerning its bonds which has financed part of Victorville 2. The Riverside Grand Jury has issues with the City of Victorville over its lack of transparency, oversight and mismanagement of Victorville 2 and the loss of millions of tax dollars...yet these issues are unrelated to the Energy Commission's proceedings involving a showing of "good cause"? Really?

Further, I am beyond frustration to learn from you that once the Commission has reached its decision there is nothing further that I can do to appeal or change it?

Thank you for passing on my phone number to Alana Mathews. I would appreciate it if you could also pass along my cell phone number of (951) 345-5663. I look forward to her return call on Monday.

Thank you for your time,
Bob Landwehr

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Re: FW: Victorville 2

From: **Mary Dyas** (Mdyas@energy.state.ca.us)
Sent: Mon 7/06/09 11:06 AM
To: BOB LANDWEHR (boblandwehr@msn.com)

Bob,

Staff counsel has suggested that you speak to your attorney regarding this issue. You might also check directly with the California Public Utilities Commission.

Mary

MARY DYAS | Compliance Project Manager

Direct: (916) 651-8891 | Fax: (916) 654-3882
mdyas@energy.state.ca.us
Monday - Thursday 7:00 a.m. to 3:00 p.m.



California Energy Commission
Siting, Transmission, & Environmental Protection (STEP) Division
1516 Ninth Street, Sacramento, CA 95814
www.energy.ca.gov

>>> BOB LANDWEHR <boblandwehr@msn.com> 7/2/2009 8:04 AM >>>
Good Morning Ms. Dyas,

I sent the attached e-mail a couple of months ago and never received a reply. Could you direct me to someone within your organization that could address my two questions.

Thank you for your time,

Bob Landwehr
27961 Celia Road
Murrieta, CA 92563

From: boblandwehr@msn.com
To: pao@energy.state.ca.us
Subject: Victorville 2
Date: Wed, 22 Apr 2009 11:05:41 -0700

Hello,

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My family has owned a 5-acre parcel in Victorville for over 50 years. Our parcel was condemned in a resolution of necessity hearing on July 15, 2008. We have a couple of questions concerning our notification and jurisdiction for eminent domain that we hope you or someone from the Commission might be able to answer. First, what constitutes, "*personal notice of which has been served on the owners of the property to be condemned*" as found in 625(a)(1)(A) Public Utilities Code?

And second, doesn't the City of Victorville have to comply with 625(a)(1)(A) PUC by waiting until the Commission issues its certification/license for VV2 before the City of Victorville can condemn our property?

Thank you,

Bob Landwehr
27961 Celia Road
Murrieta, CA 92563

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Re: FW: Status update on 2 questions?

From: **Mary Dyas** (Mdyas@energy.state.ca.us)
Sent: Mon 9/14/09 3:20 PM
To: BOB LANDWEHR (boblandwehr@msn.com)

Bob,

Your questions have been reviewed by staff attorney's here at the Energy Commission with the following recommendation -- they suggest that you contact the city counsel's office of the city of Victorville for legal questions about the Victorville Municipal Utility Services (VMUS) obligations. That would be the place to start. They further state that if you don't get the answers you're looking for, you should consider contacting a council member or hiring an attorney.

Again, thank you for your patience, and I hope you find the answers to your questions.

Mary Dyas



>>> BOB LANDWEHR <boblandwehr@msn.com> 8/27/2009 1:56 PM >>>
Hello Mary,

I have been referred back to the CEC with my original two questions. My family and I do not have an attorney. Would you be so kind to refer me to someone within the CEC that could answer the same two questions. Thank you for your time.

Bob

Subject: RE: Status update on 2 questions?
Date: Tue, 25 Aug 2009 17:04:21 -0700
From: aei@cpuc.ca.gov
To: boblandwehr@msn.com

Mr Landwehr,

My deep apologies for not replying sooner, these do not fall under the CPUC, as power plant permitting falls under the CEC, we have nothing to do with it. I will have to refer you back to the CEC and the City.

This is very much a question for their procedures as ours will be different.

Kind Regards

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Iain Fisher

CEQA Regulatory Analyst

CPUC
Energy Division
Transmission & Environmental Permitting
505 Van Ness Avenue, Room 4a
San Francisco
CA
94102-3298

Tel: 415 355 5580
Fax: 415 703 2200

From: BOB LANDWEHR [mailto:boblandwehr@msn.com]
Sent: Thursday, August 13, 2009 9:00 AM
To: Fisher, Iain
Subject: Status update on 2 questions?

Iain Fisher
CEQA Regulatory Analyst
CPUC
Energy Division

Good Morning Iain Fisher,

Last month I corresponded with you in an attempt to get an answer to a couple of questions regarding Victorville 2:

#1) What constitutes, "*personal notice of which has been served on the owners of the property to be condemned*" as found in 625(a)(1)(A) of the Public Utilities Code?

#2) Does the City of Victorville have to comply with 625(a)(1)(A) PUC by waiting until the Commission issues its certification/license for VV2 before the City of Victorville can condemn our property?

The condemned property has been owned by our family for over 50 years. My siblings and I are not represented by an attorney. A status update to the answers of these two questions would be most appreciated. If you can't answer the two questions, would you be so kind to refer me to the person in your organization that can. Thank you for your time.

Sincerely,

Bob Landwehr
27961 Celia Road
San Diego, CA 92122

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RE: Victorville 2

From: **BOB LANDWEHR** (boblandwehr@msn.com)
Sent: Wed 9/29/10 8:09 PM
To: mdyas@energy.state.ca.us

Thank you Mary!

Date: Wed, 29 Sep 2010 06:39:15 -0700
From: Mdyas@energy.state.ca.us
To: boblandwehr@msn.com
Subject: Re: FW: Victorville 2

Hi Bob,

Yes, it's been extremely busy. I thought I had gotten back to you; my apologies. I did check the list when you had previously asked, and did not see the name "Landwehr" on it.

Mary

>>> BOB LANDWEHR <boblandwehr@msn.com> 9/28/2010 9:14 PM >>>
Good Evening Mary,

With all the solar projects I've been reading about in the newspaper...you must be very busy. When you get a chance, I still would like to know if you could check your address lists for the Victorville 2 project to see if we are on it.

Hope all is well,

Bob Landwehr

From: boblandwehr@msn.com
To: mdyas@energy.state.ca.us
Subject: Victorville 2
Date: Wed, 4 Aug 2010 14:52:26 -0700

Good Afternoon Mary,

Sorry I am now just getting back to from a few weeks ago. I've been a little overwhelmed with court stuff and the City of Victorville. Anyway, the last time we spoke you mentioned something about an address list for Victorville 2. Does the CEC have my name or any "Landwehr" on an address list for notification or contact concerning any of the application process for Victorville 2. In speaking with my siblings, none of us recall receiving anything.

Thanks for your help,

Bob Landwehr

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CALIFORNIA ENERGY COMMISSION1516 Ninth Street
Sacramento, California 95814Main website: www.energy.ca.gov**Form CEC-108: SERVICE ON THE CHIEF COUNSEL****PURPOSE OF THIS FORM:**

Energy Commission regulations found in Title 20 of the California Code of Regulations set forth three instances in which petitions or requests must be filed with or served on the Chief Counsel. The Chief Counsel has designated the Dockets Office as his agent for accepting service or filing of the following documents. The documents identified in this form will be deemed filed with or served on the Chief Counsel on the date they are docketed, provided this completed form is docketed with them. This form is your instruction to the Docket Office staff to serve your document on the Chief Counsel. You may **use this form** to initiate a proceeding under any of the three sections (Section 1231, Section 1720, and Section 2506), **cut and paste** the information below into an email, or **type the information below** into an email that accompanies your document to the Docket Office. The email address for the Dockets Office is docket@energy.ca.gov. The mail address is 1516 9th Street, MS-4, Sacramento, CA 95814.

Filer's Name: ROBERT LANDWEHR

Title of document to be served: PETITION FOR RECONSIDERATION OF A
DECISION TO EXTEND THE 5-YEAR CONSTRUCTION DEADLINE FOR
THE VICTORVILLE 2 POWER PLANT PROJECT #07-AFC-1C

This document relates to docket #: _____

Please check only one of the following boxes:

- Section 1231:** I am filing a **complaint or request for investigation**. Please file my document with the Chief Counsel.
- Section 1720:** I am filing a **petition for reconsideration of a decision or order** within 30 days after the decision or order is final. Please file my document with the Chief Counsel.
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 THE COMMISSION'S PUBLIC ADVISER AT (800) 822-6228, or (916) 654-4489
 or EMAIL: PUBLICADVISER@ENERGY.CA.GOV

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