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

In the Matter of:)
)
The CARLSBAD ENERGY)
CENTER PROJECT)
)

Docket No. 07-AFC-06C

**PROJECT OWNER’S RESPONSE TO ROBERT SARVEY’S
PETITION TO THE FULL COMMISSION
TO RECONSIDER THE CARLSBAD COMMITTEE’S RULING
LIMITING INTERVENTION**

November 25, 2014

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**STATE OF CALIFORNIA
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In the Matter of:)
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Docket No. 07-AFC-06C

**PROJECT OWNER’S RESPONSE TO ROBERT SARVEY’S
PETITION FOR RECONSIDERATION**

I. BACKGROUND

On October 6, 2014, Robert Sarvey (“Mr. Sarvey” or “Petitioner”) filed a Petition to Intervene (the “Petition”) in the Carlsbad Energy Center Project (“CECP”) proceeding with the California Energy Commission (the “Commission”) siting committee assigned to the CECP (“Committee”) pursuant to Section 1207 of Title 20 of the California Code of Regulations. On October 31, 2014, the Committee issued its Order Partially Approving Robert Sarvey’s Petition to Intervene (the “Order”). The Order limits Mr. Sarvey’s participation as an Intervenor to the topics of air quality, greenhouse gas emissions, public health, and alternatives. On November 18, 2014, Petitioner filed its Petition to the Full Commission to Reconsider the Carlsbad Committee’s Ruling Limiting Intervention (the “Petition for Reconsideration”). The Petition for Reconsideration argues, among other things, that the Committee’s Order is unlawful and that the Commission should grant Mr. Sarvey unrestricted intervention. Project owner Carlsbad Energy Center LLC (“Project Owner”) herein responds to the Petition for Reconsideration.

Project Owner is opposed to and respectfully requests that the Commission reject the Petition for Reconsideration.

II. ARGUMENT

A. The Presiding Member Acted Appropriately and Within Authorized Express Discretion in Limiting Mr. Sarvey's Participation.

Title 20, California Code of Regulations, section 1207(c) states that the “presiding member may grant leave to intervene....” Section 1207 thus does not compel the Presiding Member or the Commission to grant every Petition to Intervene submitted in every proceeding. (20 Cal. Code Regs. § 1207 (emphasis added).) Instead, section 1207(c) provides that the Presiding Member can choose to allow a person to intervene only when “reasonable and relevant.” (20 Cal. Code Regs. § 1207 (emphasis added).) Thus, the Presiding Member had the express discretion to deny intervention in its entirety and refuse to allow Petitioner to participate in the proceeding unless Petitioner demonstrated reasons to be an Intervenor that were both “reasonable” and “relevant.”

The Presiding Member decided for certain stated reasons, that Mr. Sarvey's intervention should be limited to discreet topics where the Presiding Member felt Mr. Sarvey's intervention as a party would be reasonable and relevant, namely to those topic areas involving impacts that can extend beyond the project vicinity - air quality, greenhouse gas, public health, and alternatives. The Presiding Member concluded that Petitioner had not demonstrated that the CECP would affect any personal interest of Petitioner's or that Petitioner would bring information or expertise that would help the Presiding Member render a proposed decision beyond these four topics. (Order at p. 2.) Nothing in Mr. Sarvey's Petition for Reconsideration warrants reexamination of this conclusion. Petitioner cites the potential impacts to residents and

ratepayers throughout the State of California as reasons why the Commission should grant Petitioner full intervention in the CECP proceeding. (Petition for Reconsideration at p. 3 - 5.) These objectives do not meet the requirements of Title 20, California Code of Regulations, section 1207(a) that petitioner set forth “the position and interest of the petitioner in the proceeding.” (20 Cal. Code Regs. § 1207(a) (emphasis added).) The fact that Mr. Sarvey has participated in other Commission proceedings and testified on topics beyond the four topics to which he is now limited is irrelevant since the Presiding Member determined that Mr. Sarvey has no position or interest in such issues in the CECP proceeding.

B. The Committee Order is Lawful and Appropriate.

Mr. Sarvey’s argument that the Order is unlawful is misplaced. First, the Order does not in any way regulate or limit Petitioner’s ability to provide public comment in the CECP proceeding. The Order itself affirms this right by stating that “[t]his limitation does not restrict Petitioner’s right to make public comments separately from his role as Intervenor.” (Order at p. 2.) Furthermore, the Order does not impose new “ad-hoc requirements” for intervention. (Petition for Reconsideration at p. 3.) As set forth in further detail above, the California Code of Regulations requires an Intervenor’s participation in a power plant siting case to be both reasonable and relevant. (20 Cal. Code Regs. § 1207(c).) Mr. Sarvey inaccurately interprets the Presiding Member’s compliance with this requirement as the imposition of some sort of residency requirement for full intervention. This interpretation is inaccurate.

Instead, intervention as a party to a siting proceeding is a discretionary decision that may be granted to certain persons under certain limited conditions. In short, intervention is a “duty,” not a “right.” A siting case is an adjudication, not a rulemaking, hence the discretion and requisite criteria for intervention in siting cases. The Presiding Member has discretion to decide

when and how a proposed intervention satisfies the requirements for intervention and whether the intervention is in furtherance of the siting process before the assigned siting committee.

C. The Presiding Member Did Not Exceed the Discretion Granted Under Section 1207 Compelling The Commission To Deny the Petition.

The Commission should only override the Presiding Member's intervention decision if it finds the Presiding Member exceeded the discretion granted under Title 20, California Code of Regulations, section 1207. This conclusion flows from the express grant of discretion to the Presiding Member in section 1207. Further, the entire intent and function of delegating a Committee of two Commissioners to process a siting case is to allow that Committee to assess the unique circumstances of each siting case and make the decisions and take the actions necessary to process that case. Should the Commission rebuke a Committee member for any action less than abuse of discretion or violation of procedure or law, the effectiveness of the Committee will be undermined.

Here, the findings and rationale of the Presiding Member in the Order are in keeping with the law as well as the authority and discretion granted the Presiding Member regarding intervention. Managing parties, the evidentiary process, and participation is at the heart of ensuring an effective, fair, and complete siting process. Because the Presiding Member acted within the discretion granted the Presiding Member and because of the important policy and procedural reasons for allowing a Committee to manage a siting process, the Commission lacks a reason, let alone a basis to override the Order.

III. CONCLUSION

The California Code of Regulations makes clear that participation in a siting proceeding as an intervening party is a duty, not a right, and that the Presiding Member has the discretion to

reject, let alone limit, intervention in siting cases. For the reasons above and the rationale in the Order, it is apparent that the decision to limit Mr. Sarvey's intervention was correctly and appropriately made and cannot and should not be overridden by the Commission. Thus, the Commission should reject the Petition for Reconsideration.

Dated: November 25, 2014

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