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<b>DOCKET</b>	
<b>07-AFC-6</b>	
DATE	SEP 23 2011
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STATE OF CALIFORNIA  
State Energy Resources  
Conservation and Development Commission

In the Matter of: ) Docket No. 07-AFC-6  
)  
) INTERVENOR ROB SIMPSON'S  
) COMMENTS ON COMMITTEE'S  
) ACTIONS TAKEN IN THE SEPT. 13  
) MEETING IN VIOLATION OF THE  
) BAGLEY KEEN OPEN MEETING ACT  
) AND ON SCHEDULING  
)  
Carlsbad Energy Center Project )

**Land-2 and Land-3**

Intervenor objects to the Committee's failure to abide by the Bagley Keep Open Meeting Act and Warren Alquist Act laws on meetings, motions, orders, etc. and to the removal of Conditions Land-2 and Land-3 without properly noticed hearing and comment on the issue.

By order dated June 30, 2011, the Commission "REMAND[ed] the matter to the Carlsbad AFC Committee to take evidence and revise the PMPD as needed on those issues and in addition 1) issues associated with Conditions Land-2 and Land-3 and their environmental impacts." At the September 13, 2011 Committee meeting, the Applicant asked that the Committee remove conditions Land-2 and Land-3, stating that, although these conditions were proposed by the Applicant, it would make the project too expensive.

The Committee allowed extensive discussion of the issue including a lengthy presentation by the Applicant. The Applicant specifically stated that it was not making a motion because it did not need to make a motion. The Committee then directed the parties to comment on the matter. The Committee's directions were echoed in an email from the Hearing Officer "invit[ing]the parties and members of the public to comment regarding the appropriate response to the Applicant's request" by an entirely arbitrary date, September 23. During the meeting and in the email, the Hearing Officer stated that, "Following review of the written comments, the Committee will issue an order or take other action as it deems appropriate."

The Committee violated the Bagley Keep Open Meeting Act and CEC regulations by addressing a substantive issue not on the meeting notice or agenda and entertaining the request without undertaking properly noticed hearing and comment procedures. Pursuant to the Bagley Keen Act, "The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. . . . No item shall be added to the agenda subsequent to the provision of this notice." (Govt. Code §11125(b).)

The Sept. 13 meeting notice did not alert the parties that any substantive issues would be addressed including the removal of Land-2 and Land-3. The notice read: "The purpose of the Committee Conference is to discuss the requests to postpone the Evidentiary Hearing, the schedule going forward, and other pending matters such as the request of Terramar and Power of Vision for relief from the requirement that paper copies accompany electronically mailed copies of filings." As the Applicant proposed Land-2 and Land-3, supported the approval of the PMPD inclusive of Land-2 and Land-3, and had never mentioned its removal in any relevant fora, the removal of Land-2 and Land-3 was most certainly not a pending matter.

This whole charade has not only been conducted in violation of the law but has been a waste of time and resources. The Commission has already instructed the Committee to address any issues with Land-2 and Land-3 through additional evidentiary hearings. The issue will be taken up through that process and the Committee can make whatever changes it deems necessary to the PMPD “based upon evidence presented in the hearings on the application.” (20 C.C.R. § 1749.) The Committee has acted inappropriately in requiring the parties to submit comments on this issue based on an informal request made during a meeting that did not notice the issue, and under the threat of an order being issued against parties’ interests on a critical and hotly contested issue.

Pursuant to the Bagley Keep Open Meeting Act, any action the Committee takes in violation of Section 11125 is null and void. Having undertaken the issue at a meeting in violation of Section 11125, any action the Committee takes regarding removal of Land-2 and Land-3 at this time is subject to judicial challenge. (See Govt. Code § 11130.3.) Mr. Simpson urges the Committee to drop the matter and allow the evidentiary hearings to proceed as planned.

Notwithstanding the procedural violations described above, pursuant to 20 C.C.R. § 1709.8, if the Applicant has determined that it will be too expensive to build this facility, it most certainly has the right to withdraw its applications for certification. If Applicant intend to withdraw its application it would, of course, be in the best interest of the parties, the Commission, and the taxpayers of the State of California to do so sooner rather than later.

## Scheduling

Applicant is in agreement with the Center for Biological Diversity's (and initially Applicant's) position regarding scheduling and the PSD permit. To quote the Applicant's Motion To Join Center For Biological Diversity's Request To Delay The September 19, 2011 Evidentiary Hearing, "As CBD correctly points out, it would be premature to hold further evidentiary hearings in September 2011 because the Presiding Member cannot issue a [Revised] Presiding Member's Proposed Decision ("RPMPD") until a full analysis of compliance with air quality laws is made. (20 Cal. Code Regs. § 1752.3(a).) Specifically, the RPMPD "shall include findings and conclusions on conformity with all applicable air quality laws." (Id.) In light of EPA's July 18, 2011 correspondence, it is impossible to include a full analysis of CECP's compliance with federal PSD regulations until EPA has issued a new PSD applicability determination." The hearings should be delayed until the PSD and FDOC permitting proceedings are completed.

Mr. Simpson's counsel will be out of the country November 30 through December 19 and will not be available to participate in hearings remotely November 30 through December 12. Any accommodation that can be made regarding counsel's schedule is appreciated.

DATED: September 23, 2011.

Respectfully,

By: April Rose Sommer  
April Rose Sommer

Attorney for Rob Simpson

