

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission



In the Matter of:

**The Application for Certification for the
CARLSBAD ENERGY CENTER
PROJECT**

Docket No. 07-AFC-6

CARLSBAD ENERGY CENTER LLC'S
OPPOSITION TO ROB SIMPSON'S PETITION FOR RECONSIDERATION

July 5, 2012

John A. McKinsey
Melissa A. Foster
Brian J. Nese
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Phone: (916) 447-0700
Facsimile: (916) 447-4781

Attorneys for CARLSBAD ENERGY CENTER LLC

STATE OF CALIFORNIA

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I. INTRODUCTION

Carlsbad Energy Center LLC ("Project Owner") hereby submits this opposition to the untimely Petition for Reconsideration ("Petition") of the California Energy Commission's ("Commission") Final Decision in the Carlsbad Energy Center Project, 07-AFC-06 ("CECP") emailed by intervenor Rob Simpson on Monday, July 2, 2012 at approximately 9:11 p.m., Pacific Daylight Time ("PDT"). The Petition is both untimely and incomprehensible. For those reasons, the Project Owner respectfully urges the California Energy Commission ("Commission") to refuse to recognize the Petition as valid, or in the alternative, to reject it for failure to meet basic comprehensibility criteria.

II. ARGUMENT

A. Simpson's Petition is Untimely

The Commission issued the Final Decision for CECP on May 31, 2012. California Code of Regulations, Title 20, Section 1720 ("Section 1720") allows a party to petition the Commission for reconsideration of its decision "[w]ithin 30 days after a decision or order is

final” (20 Cal. Code Regs. § 1720(a).) Pursuant to California Code of Regulations, Title 20, Section 1720.4, the effective date of the CECP Final Decision was June 1, 2012. Thus, the deadline by which Mr. Simpson could have timely filed his Petition would have been Sunday, July 1, 2012. However, because Commission regulations allow the last day of a time period to be excluded if that day is a Sunday or a holiday, the most liberal, possible interpretation of the deadline to file a petition for reconsideration in this case would have been up to and including Monday, July 2, 2012 by the close of business (or 5:00 p.m., PDT). Mr. Simpson filed his petition at 9:11 p.m. (PDT) on July 2 – more than four hours after the close of Commission business hours – and, thus, failed to timely file his Petition so that the Commission and other parties could review and properly prepare to respond to it.

Timing is a critical part of any formal government procedure, but final appeal or challenge deadlines are particularly critical for this Commission’s final decisions, as failure to comply with those deadlines prevents the important, approved infrastructure for projects from clearing or gaining clarity on the nature of appeals and challenges on the approved projects. For these reasons, the Commission should refuse to accept jurisdictional authority over this petition and reject it as being untimely.

B. Simpson’s Petition is Incomprehensible

Even if the Petition were timely, it fails to state a comprehensible basis for reconsideration under Section 1720.

Much as the United States Bankruptcy Judge Leif M. Clark stated in his order denying a debtor’s motion for incomprehensibility, Intervenor Simpson’s 19 page document appears to be a stream of consciousness that mingles nonsensical statements or requests with cutting and pasting of entire sections of various statutes and regulations without any connection thereof. (See *In re Richard Willis King* (Bankr. Western District Texas, 2006) Bankr. Case No. 05-56485-C, at p.2 wherein the Court states: “*The court cannot determine the substance, if any, of the Defendant’s legal argument nor can the court even ascertain the relief the Defendant is requesting.*”) Consider these examples of the incomprehensibility of the Petition:

1. The opening header of the document fails to even state that Intervenor Simpson’s Petition seeks to have the Commission reconsider its decision in the CECP proceeding. Instead, the Petition seems to seek “Appeal of Coastal Permit, Authority to Construct (ATC), any other permit or approval that the Decision overrides, subsumes, circumvents or precludes...” (Petition at p. 1.)
2. The Petition has only two headers: the opening header, described above, and the word “Conclusion” in all capitals on page 18. (Petition at pp. 1 and 18.)
3. The Petition does not cite or refer to Section 1720, the governing authority for the contents of petitions for reconsideration, nor does it appear to meet any of the specifically required content requirements, such as:
 - a. “A petition 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.” (20 Cal. Code Regs. § 1720(a).)or
 - b. “The petition must **fully explain** why the matters set forth could not have been considered during the evidentiary hearings and their effects on upon a substantive element of the decision. (20 Cal. Code Regs. § 1720(a) (emphasis added).)

The Commission should not be burdened with deciphering or attempting to decipher the intended arguments and positions of a party.¹ Intervenor Simpson has failed to meet the basic standards of clear communication and, therefore, the Project Owner respectfully urges the Commission to refuse to tolerate or accept this lack of expected work. When considering that

¹ Again a citation to the Honorable Clark’s order is highly relevant here:
“Deciphering motions like the one presented here wastes valuable chamber staff time and invites this sort of footnote [referring to the contents of the footnote wherein the court cites the character played by Adam Sandler in Billy Madison and says “Mr. Madison, what you’ve just said is one of the most insanely idiotic things I’ve ever heard...”] (In re Richard Willis King (Bankr. Western District Texas, 2006) Bankr. Case No. 05-56485-C, at p. 2, FN1.)

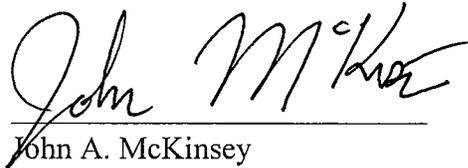
Intervenor Simpson also failed to timely file his Petition, the inability to accept such an incomprehensible document is all the more apparent and relevant.

III. CONCLUSION

For the above reasons, the Project Owner respectfully urges the California Energy Commission to reject Intervenor Simpson's Petition as untimely and incomprehensible.

Date: July 5, 2012

Stoel Rives LLP

A handwritten signature in black ink that reads "John McKinsey". The signature is written in a cursive style with a horizontal line underneath the name.

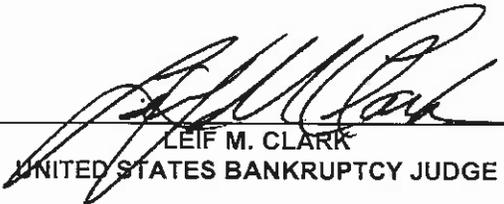
John A. McKinsey
Attorneys for Applicant
CARLSBAD ENERGY CENTER LLC

EXHIBIT A



SO ORDERED.

SIGNED this 21 day of February, 2006.


LEIF M. CLARK
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court

Western District of Texas
San Antonio Division

IN RE
RICHARD WILLIS KING
DEBTOR
FACTAC, INC.,
<i>PLAINTIFF</i>
v.
RICHARD WILLIS KING
<i>DEFENDANT</i>

BANKR. CASE NO.

05-56485-C

CHAPTER 7

Adv. No. 05-5171-C

ORDER DENYING MOTION FOR INCOMPREHENSIBILITY

Before the court is a motion entitled "Defendant's Motion to Discharge Response to Plaintiff's Response to Defendant's Response Opposing Objection to Discharge." Doc. #7. As background, this adversary was commenced on December 14, 2005 with the filing of the plaintiff's complaint objecting to

the debtor's discharge. (Doc. #1). Defendant answered the complaint on January 12, 2006. Doc. #3. Plaintiff responded to the Defendant's answer on January 26, 2006. Doc. #6. On February 3, 2006, Defendant filed the above entitled motion. The court cannot determine the substance, if any, of the Defendant's legal argument, nor can the court even ascertain the relief that the Defendant is requesting. The Defendant's motion is accordingly denied for being incomprehensible.¹

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¹ Or, in the words of the competition judge to Adam Sandler's title character in the movie, "Billy Madison," after Billy Madison had responded to a question with an answer that sounded superficially reasonable but lacked any substance,

Mr. Madison, what you've just said is one of the most insanely idiotic things I've ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul.

Deciphering motions like the one presented here wastes valuable chamber staff time, and invites this sort of footnote.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION
FOR THE CARLSBAD ENERGY
CENTER PROJECT**

**Docket No. 07-AFC-6
PROOF OF SERVICE**
(Revised 3/27/2012)

APPLICANT

Jennifer Hein
George Piantka, PE.
NRG Energy, Inc., West Region
5790 Fleet Street, Ste. 200
Carlsbad, CA 92008
jennifer.hein@nrgenergy.com
george.piantka@nrgenergy.com

APPLICANT'S CONSULTANTS

Robert Mason, Project Manager
CH2M Hill, Inc.
6 Hutton Centre Drive, Ste. 700
Santa Ana, CA 92707
Robert.Mason@ch2m.com

Megan Sebra CH2M Hill, Inc.
2485 Natomas Park Drive,
Ste. 600 Sacramento, CA
95833
Megan.Sebra@ch2m.com

COUNSEL FOR APPLICANT

John A. McKinsey
Stoel Rives, LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
jamckinsey@stoel.com

INTERESTED

AGENCIES California ISO
e-recipient@caiso.com

INTERVENORS

Terramar Association
Kerry Siekmann &
Catherine Miller
5239 El Arbol
Carlsbad, CA 92008
siekmann1@att.net

City of Carlsbad
South Carlsbad Coastal
Redevelopment Agency
Allan J. Thompson
21 "C" Orinda Way
#314 Orinda, CA 94563

City of Carlsbad
South Carlsbad Coastal
Redevelopment Agency
Joseph Garuba,
Municipals Project Manager
Ronald R. Ball, Esq., City Attorney
1200 Carlsbad Village Drive
Carlsbad, CA 92008
Joe.Garuba@carlsbadca.gov
ron.ball@carlsbadca.gov

California Unions for Reliable Energy
(CURE)
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
gsmith@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

Center for Biological
Diversity c/o William B.
Rostov EARTH JUSTICE
426 17th Street, 5th Floor
Oakland, CA 94612
wrostov@earthjustice.org

Power of Vision
Julie Baker & Arnold Roe, Ph.D.
4213 Sunnyhill Drive Carlsbad,
California 92013
julbaker@pacbell.net
roe@ucla.edu

Rob Simpson
Environmental Consultant
27126 Grandview Avenue
Hayward, CA 94542
rob@redwoodrob.com

April Rose Sommer
Attorney for Rob Simpson
P.O. Box 6937
Moraga, CA 94570
aprilsommerlaw@yahoo.com

**ENERGY COMMISSION
– DECISIONMAKERS**

KAREN DOUGLAS
Commissioner and Associate Member
kldougla@energy.state.ca.us

Galen Lemei
Adviser to Commissioner Douglas
glemei@energy.state.ca.us

Tim Olson
Adviser to Commissioner Douglas
tolson@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

**ENERGY COMMISSION
STAFF** Mike Monasmith
Siting Project Manager
mmonasmi@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

**ENERGY COMMISSION –
PUBLIC ADVISER**
Jennifer Jennings
Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Kimberly J. Hellwig, declare that on July 5, 2012, I served and filed a copy of the attached:

CARLSBAD ENERGY CENTER LLC'S OPPOSITION TO ROB SIMPSON'S PETITION FOR RECONSIDERATION

This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/carlsbad/index.html.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked "hard copy required."

AND

For filing with the Docket Unit at the Energy Commission:

- by hand delivering an original paper copy and emailing an electronic copy to the address below (preferred method);

OR

- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT

Attn: Docket No. 07-AFC-6 1516 Ninth Street,
MS-4 Sacramento, CA 95814-5512
docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission Michael
J. Levy, Chief Counsel 1516 Ninth Street
MS-14 Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

//Original Signed\\

KIMBERLY J. HELLWIG