



**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**

California Energy Commission DOCKETED 07-AFC-6
TN # 66304 JUL 19 2012

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

**Docket No. 07-AFC-06
Order No. 12-0724-02**

**[PROPOSED] COMMISSION ORDER DENYING PETITIONS FOR RECONSIDERATION
FILED BY THE CITY OF CARLSBAD, TERRAMAR ASSOCIATION, POWER OF VISION,
AND ROB SIMPSON**

On May 31, 2012, the Energy Commission unanimously approved a Commission Adoption Order adopting a Commission Decision approving the Carlsbad Energy Center Project (CECP) Application for Certification (AFC). The Order was filed with the Commission’s Docket Unit on June 1, 2012. By the Order’s terms, the Commission Decision was adopted, issued, effective, and final on that date. (Cal. Code Regs., tit. 20, § 1720.4.)

Petitions for Reconsideration of the Commission Decision were filed as follows:

<u>Party</u>	<u>Date filed</u>
City of Carlsbad	June 26, 2012
Power of Vision	June 28, 2012
Terramar Association	June 29, 2012
Rob Simpson	July 3, 2012 (The Petition was e-mailed to the parties and the Docket unit on July 2 at 9:11 p.m. Because it was sent and received after the close of business, it was given a filing date of the following business day.)

The Applicant filed responses to Mr. Simpson’s Petition on July 5, 2012 and to the Petitions filed by the City of Carlsbad (City), Terramar, and Power of Vision on July 10, 2012. Commission staff filed responses to the Petitions filed by the City, Terramar, and Power of Vision on July 3, 2012 and to Mr. Simpson’s Petition on July 5, 2012.

The Energy Commission held a noticed hearing on the petitions on July 24, 2012.

Public Resources Code section 25530 and California Code of Regulations, title 20, section 1720 govern the filing and consideration of reconsideration requests. They set forth several requirements relevant to these petitions:

“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 the evidentiary hearings, and their effects upon a substantive element of the decision. In addition to being served on all parties as required by section 1210, the petition for reconsideration shall be filed with the chief counsel of the commission.” California Code of Regulations, title 20, subsection 1720(a).

Thirty days following the June 1, 2012 filing of the Commission Decision ended on July 1, 2012. Because July 1 was a Sunday, the deadline for filing a petition was extended to the next business day—July 2, 2012—according to California Code of Regulations, title 20, section 1003.

The City asks that three conditions of certification contained in the Commission Decision be amended. First it requests to include a new Condition **SOCIO-1** requiring that the project developer “pay the development impact fees adopted by ordinance or resolution of the Carlsbad City Council . . .” (City Petition for Reconsideration, p. 5.) The Commission Decision in fact contains Condition **SOCIO-1**, which identifies the fee reimbursement process that is found in California Code of Regulations, title 20, subsection 1715(a)(1) (“Local agencies shall be reimbursed for costs incurred in accordance with actual services performed by the local agency . . .”). The issue of city development fees was discussed multiple times before the Commission, including in written comments on the Revised Presiding Member’s Proposed Decision (RPMPD), the April 19, 2012 Committee Conference on the RPMPD (RPMPD Comment Hearing) (4/19/12 Reporter’s Transcript (RT), p. 142), and the May 31, 2012 Energy Commission hearing at which the Commission Decision was adopted with the Commissioners explicitly rejecting further amendments to Condition **SOCIO-1** (5/31/12 RT, pp. 232, 252—259, 273—276, 294—298). No new evidence or error in fact or error or change in law has been identified with respect to this already considered topic.

Second, the City asks that a temporary extension of its Coastal Rail Trail be constructed on the project site until construction of the CECP begins reflected in a proposed amendment to Condition **LAND-1**. This was also discussed in the City and Applicant’s comments on the RPMPD and during the RPMPD Comment Hearing (4/19/12 RT, pp. 58—77). After considering the comments, the Committee did not recommend changes to the condition. (The response to the comments is found at page 20 of the Revisions to the Revised PMPD and page 8.1-13 of the final compiled Commission Decision.) The City cites no new evidence or error in fact or change or error of law that would justify reconsideration of this issue.

Third, the City proposes amendments to Condition **LAND-2** to require that the existing Encina power plant be demolished within two years of City approval of a redevelopment plan for the site. The condition in the Commission Decision reflects a Commission policy decision that demolition be required only when the proposed redevelopment project can pay the demolition costs, so that the costs are not born by the CECP and ultimately electricity ratepayers. The concepts embodied in Condition **LAND-2** were first suggested by the Carlsbad AFC Committee in the May 9, 2011, Presiding Member's Proposed Decision, reduced to proposed conditions in revisions to that PMPD, and were extensively discussed at various hearings and in comments and testimony since the May 2011 PMPD was published. Most recently, Condition **LAND-2** and the related **LAND-3** were discussed by the parties in their comments on the RPMPD and during the RPMPD Comment Hearing. (4/19/12 RT, p. 26-43.) The City cites no new evidence or error in fact or change or error of law that would justify reconsideration of this issue.

Finally, the City seeks "reconsideration of the Commission's decision with respect to review by the California Supreme Court of the following legal issues on the grounds and for the reasons which have been previously raised by the City and former Redevelopment Agency in these proceedings." It lists eight "legal issues," each described in the form of a question, without identifying new evidence or specific legal or factual errors for the Commission to consider. Each issue is described as "previously raised." This portion of the City's Petition therefore does not meet the legal standards prescribed in Section 1720.

Power of Vision's petition invites the Commission to revisit its decision to disagree with city fire official recommended access road widths and to override a State Fire Code provision. The Commission Decision fully explains its decision to make the override finding; no new evidence or error of fact or law justifying reconsideration of this issue is presented.

Terramar Association asserts that certain statements and findings in the Commission Decision are inconsistent with the recent ordinance adopted by the City two days before the Commission Adoption Hearing. That ordinance assigns the city fire department a "secondary" response role for events at the CECP. The Commission did take official notice of that ordinance and found that the CECP was "in conformity" with the ordinance. (May 31, 2012, Commission Adoption Order, No.12-0531-06, Finding 13.) No new evidence or error of fact or law justifying reconsideration has been offered.

Rob Simpson's untimely filed petition focuses on the Commission Decision's responses to comments he made on the RPMPD, arguing that the responses are either wrong, non-responsive, incomplete, or otherwise defective. No new evidence is identified to support his arguments, nor does he explain why he was unable to make them prior to or during the Commission Adoption Hearing, which he did not attend in person or via the available telephonic link. He has not described any error of fact or law to justify reconsideration.

FINDINGS

The Commission hereby adopts the following findings:

1. The Commission Decision approving the CECP AFC was final on June 1, 2012.
2. The statutory deadline for filing a request for reconsideration of the decision was the close of business—5:00 p.m. Pacific Daylight Time—on Monday, July 2, 2012.
3. The petitions of the City of Carlsbad, Terramar Association, and Power of Vision were filed prior to the statutory deadline and are timely.
4. Rob Simpson's petition was e-mailed to the parties and the Docket unit at 9:11 p.m. on July 2, 2012, therefore filed on July 3, 2012, after the statutory deadline and is not timely.
5. The petitions do not describe any new evidence that justifies reconsideration of the Commission Decision.
6. The petitions do not identify errors of fact or errors or changes of law that justify reconsideration of the Commission Decision.
7. The petitions merely reargue issues of fact and law that were argued before the Commission prior to its adoption of the Commission Decision.

ORDER

Therefore, the Commission **ORDERS** the following:

1. The Petitions for Reconsideration filed by the City of Carlsbad, Terramar Association, and Power of Vision fail to satisfy the requirements of California Code of Regulations, title 20, subsection 1720(a), and are therefore **DENIED**.
2. The Petition for Reconsideration filed by Rob Simpson was not filed within the statutory time for filing such a petition, fails to satisfy the remaining requirements of California Code of Regulations, title 20, subsection 1720(a), and is therefore **DENIED**.
3. The Commission Decision adopted, issued, effective, and final on June 1, 2012, remains in full force and effect.

4. This order is not subject to further reconsideration.
5. This Order is adopted, issued, effective, and final on the date this Order is docketed.
6. Judicial review of this Order is governed by Public Resources Code, section 25531.
7. The Application for Certification docket file for this proceeding shall be closed effective 10 days after this Order is final.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on July 24, 2012.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated: July 24, 2012, at Sacramento, California.

Harriet Kallemeyn
Secretariat
California Energy Commission