

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:) Docket No. 02-AFC-04
)
Application of Certification for the Walnut Energy)
Center by the Turlock Irrigation District)

**OPPOSITION
TO THE PETITION TO INTERVENE
OF ENERLAND, LLC and/or ROBERT MUSSETTER**

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INTRODUCTION

On or about March 17, 2003, a “Petition for Intervention” (the “Petition”) was filed and served on behalf of Enerland, LLC (“Enerland”) and/or Robert Mussetter (“Petitioner”). Concurrently, Enerland also filed a “Financial Hardship Petition” (the “Hardship Petition”).

The Turlock Irrigation District (“TID,” the “District” or the “Applicant”) opposes the Petition on the grounds that the Petition fails to satisfy the requirements of Title 20, California Code of Regulations Section 1207. Further, while the District would not oppose a properly documented Hardship Petition, as discussed below, the appropriate documentation was not provided in this case.

Section 1207 requires that a Petition for Intervention “set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.” Because the Petition fails to meet these requirements, the Petition should be denied and the Hardship Petition is moot.

I. THE PETITION FAILS TO STATE A RELEVANT INTEREST IN THIS PROCEEDING.

The Petition fails to state a relevant interest in this proceeding. Petitioner suggests nothing more than “it has an alternative site.” (Petition, p. 1.) Presumably, to have any relevance, Enerland is suggesting that it has a site that, consistent with the requirements of the California Environmental Quality Act (CEQA”), is within the reasonable range of feasible alternatives to the site proposed for the District’s Walnut Energy Center (“WEC”). Based on the facts in this case, Enerland cannot make such a claim and therefore fails to state an interest relevant to this proceeding.

Based on representation made to the Commission in June 2002, Enerland is the lessee – not owner – of certain real property in Colusa County, California:

MR. MUSSETTER: My name is Robert Mussetter. And I'm the Managing Director of Enerland, LLC, which owns the -- has the lease, the master lease on the entire Holthouse Ranch, some 4800

acres, for this purpose. Now, we, Enerland, sublet 200 acres out 20 of the 4800 to Reliant for this project. (Commission Business Meeting, June 26, 2002, Item 2, Colusa Power Project, Transcript p. 8.)

During a March 20, 2003 telephone conversation with representatives of the District, Mr. Mussetter confirmed that the “alternative site” referenced in the Petition is the same site (hereinafter, the “Colusa County Site”).

CEQA requires that the Commission consider a reasonable range of feasible alternatives. Thus, for Enerland to state an interest relevant to this proceeding, Enerland must make a showing that the Colusa County Site is within the reasonable range of feasible alternatives required by CEQA. As discussed below, Enerland cannot make the required showing. Accordingly, because Enerland’s sole stated interest in intervening in this case is irrelevant, the Petition should be denied.

A. Enerland’s Colusa County Site Is Not Within The Reasonable Range Of Feasible Alternatives That Must Be Considered In This Siting Case Pursuant To The Requirements Of CEQA.

The California Environmental Quality Act (CEQA) requires consideration of “a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives” [14 CCR. 15126.6(a)]. Thus, the Commission’s focus on alternatives must be confined to alternatives that “could feasibly accomplish *most of the basic objectives of the project.*” (14 CCR 15126.6(c), emphasis added.) The CEQA Guidelines further provide that “[a]mong the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts” (Id.). The Colusa County Site fails these important CEQA requirements, and because the Petition fails to state a relevant interest in this proceeding, the Petition must be rejected.

B. The Colusa County Site Fails To Meet Any Of The Applicant's Basic Project Objectives.

The District clearly articulated the project's basic objectives in the AFC. A list of the primary objectives is set forth in the AFC's Executive Summary. (TID AFC (hereinafter "AFC"), pp. 1-2 to 1.3.) The Colusa County Site fails to meet any of the basic objectives of the District.

The first objective articulated by the District is to "safely construct and operate a nominal 250-MW, natural-gas-fired, combined-cycle generating facility *within the TID service territory.*" (AFC, p. 1-2; emphasis added.) Plainly, the Colusa County Site fails to meet this most basic objective of having a generating facility sited within the TID service territory.

Second, the District is pursuing the WEC project to "increase the possibility of TID becoming a control area, or joining a different control area, both of which would require TID to have additional generation." (AFC, p. 1-3.) Thus, it is absolutely fundamental to the District's objectives that it site new generating capacity within its own service territory to facilitate its ability to become its own control area. Generation located at the Colusa County Site would not meet this basic project objective and could, potentially, exacerbate congestion issues for other control area operators if generation had to be imported through their service territories to the TID control area. The Colusa County Site fails to meet this second basic project objective.

A third basic project objective is to "provide additional generation to meet TID's growing load and meet the demands of customers within 200+ square miles of PG&E's service territory. This service territory acquisition is presently before the California Public Utility Commission (CPUC)." (AFC, p. 1-2.) As noted above, TID is seeking additional generation within its service area to facilitate, among other things, the possibility of TID becoming its own control area. The pending application to expand TID's service territory further highlights the need for additional generation within TID's service area as it exists and as it may be expanded. The Colusa County Site is remote, well-outside the District's service area and the service area that the District seeks to acquire and thus does not satisfy this important objective.

Fourth, in an effort to further its fiduciary duties to its ratepayer/owners, the District has the objective of contributing to “the diversification of the County’s economic base by providing increased employment opportunities and a reliable power supply.” (AFC, p. 1-3.) Re-locating the project to the Colusa County Site fails to provide the construction and operation employment opportunities and a reliable power supply to the District. Clearly the Colusa County Site cannot, by definition, provide the local benefits important to the District’s Board.

Fifth, the district seeks to ensure local area system reliability benefits by “developing increased local generation projects, thus reducing dependence on imported power.” The Colusa County Site would require the importation of power, thus wholly failing to provide the local system benefits sought by the District.

Finally, while power from the Colusa County Site could, arguably, provide “additional generation within TID to replace the expiration of significant long-term power purchase agreements” (AFC, p. 1-2), it certainly could not do so on a timely basis. To be clear, there is absolutely no way that a project on the Colusa County Site could provide benefits as quickly as the WEC project. Even if Enerland actually had a feasible alternative site, given the lead time necessary for TID to enter into a commercial arrangement with Enerland, to negotiate site control and obtain certification, the illusory Colusa County Site would lag at least two years and more likely three to five years behind the WEC project.

Enerland has an obligation to state a real and cognizable interest in this proceeding in its Petition. The site proposed by Enerland must be within the reasonable range of feasible alternatives. Enerland has utterly failed to present such an alternative project site. Accordingly, the Petition should be denied.¹

C. Powerplant Applicants Are not Required to Submit Multiple Sites for the Commission’s consideration.

Pre-deregulation, when Mr. Mussetter was a Commissioner, public utilities subject to CPUC regulation seeking to site a new powerplant were obligated to present multiple sites for

¹ As noted above, CEQA also requires a showing that an alternative site is “feasible” and that it will avoid significant environmental impacts. (14 CCR 15126.6(a)&(c).) The Petition is wholly silent as to these issues.

the Commission's consideration as part of the "notice of intent" or "NOI" process. (Public Resources Code Section 25113; 25502 *et seq.*) However, in the deregulated era, the law and Commission precedent clearly provide that powerplant applicants need not submit multiple project sites as part of the NOI process. Enerland's Petition, by attempting to introduce the consideration of multiple, competing sites in a single AFC proceeding, in effect seeks to impose the pre-deregulation NOI model (which would have been inapplicable to TID even pre-deregulation) to this post-deregulation siting case. The Commission should reject this proposal and deny the Petition.

II. THE PETITION FAILS TO STATE THE EXTENT TO WHICH THE PETITIONER DESIRES TO PARTICIPATE IN THE PROCEEDINGS AND FAILS TO PROVIDE ALL OF THE REQUIRED INFORMATION.

Section 1207 requires, among other things, that the Petitioner describe the "the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner." Once again, the Petition fails.

Enerland's Petition states nothing more than "it has an alternative site." There is no description of the extent to which Enerland seeks to participate. Indeed, the "alternative site" was not even described as being in Colusa County, though subsequent discussions with Enerland confirm this fact. The Petition is stark, devoid of any meaningful information. The Petition even fails to include a telephone number, and, more significantly, fails to clearly describe anything about the company other than its name, Enerland, LLC. As discussed below, the sparse nature of the Petition is particularly egregious, given its representation.

III. AS A LEGALLY SOPHISTICATED ENTITY REPRESENTED BY A FORMER CEC COMMISSIONER, ENERLAND IS NOT ENTITLED TO THE DEFERENCE TYPICALLY AFFORDED THE GENERAL PUBLIC.

The Commission has traditionally – and correctly – afforded individual members of the general public who do not have legal counsel or other professional representation deference and great latitude in the Commission's proceedings. In this case, however, Enerland is a private company represented by a former CEC Commissioner, Mr. Mussetter. As such, Enerland's

failure to meet the basic requirements for a petition to intervene is both unexcused and inexcusable.

IV. THE COMMISSION SHOULD DEFER ANY ACTION ON THE HARDSHIP PETITION.

As noted above, the Applicant does not oppose appropriately documented petitions for financial hardship. However in this case, no such documentation is presented. Indeed, it is completely counter-intuitive to have before the Commission simultaneously, (1) a representation that a California LLC in good standing has a feasible alternative site, including a financially solvent or financially responsible lessee and (2) that same company lacks the financial wherewithal to meet the nominal costs of filing and serving the necessary copies of its pleadings or to otherwise participate in the Commission's proceedings.

If the Petition is denied, the disposition of the Hardship Petition is moot. If the petition is granted, Applicant believes the Commission should reserve the right seek additional information and/or allow other parties to promulgate discovery requests to ascertain both the nature of the LLC, its member, and their financial status in determining whether to support or oppose the Hardship Petition. Accordingly, the Hardship Petition should either be deemed moot in an order denying the Petition or, in the alternative, consideration of the Hardship Petition should be deferred to a later date.

CONCLUSION

The Commission has, since its inception, been quite thoughtful and supportive of the right of the general public to participate in its proceedings. Similarly, the Commission has also correctly denied petitions to intervene when Intervenors clearly sought to use the Commission's siting process for wholly inappropriate ends.²

² See, for example, the denial of several petitions to intervene by Mr. Brad Foster: order denying petition to intervene, Elk Hill case, dated July 6, 1999; order denying petition to intervene in PDEF case (now Los Medanos), dated July 9, 1999; and order denying intervention, Delta Energy Center case, dated July 12, 1999. As Hearing Officer Fay described it:

Fortunately, the Commission can rely on more than just its common sense reaction that the Turlock ratepayers ought not be pitted in a Commission licensing proceeding against the potential financial gain of a developer of another project on a remote site in Colusa County. Instead, the Commission may quite simply rely on its own regulations regarding intervention and upon the CEQA principal related to the reasonable range of feasible alternatives that the Commission must consider in discharging its duties under its certified regulatory program.

We should all be pleased when common sense and the law intersect. Here, they are one in the same. Common sense and the law dictate that the Enerland, LLC Petition should be denied.

Respectfully submitted,

Dated: April 1, 2003

ELLISON, SCHNEIDER & HARRIS L.L.P.

By _____

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“I hate to countermand counsel, but I just, for the record, I think the answer to Commissioner Geesman's question, there have been a number of cases where petitions to intervene were denied, even though they were filed in a timely way.

In some cases it had to do with the statement of purpose for intervening, where the petitioner voiced very local concerns about the project in question, and yet lived at the other end of the state and had been an active and helpful intervenor in a case up in Yuba County; and wanted to intervene down in Monterey County. And there was no evidence that there was anything that would be contributed.

In terms of support to other intervenors that petitioner could certainly do that without being granted intervenor status. But what was articulated in the petition, and that was just one example. There may be others, as well. But I know there have been cases over the years where petitions have been denied at the discretion of the Presiding Member for matters other than an untimely filing.” (CEC Business Meeting, August 14, 2002, Transcript, P. 73.)