



**CALIFORNIA
ENERGY
COMMISSION**

1516 Ninth Street
Sacramento, CA 95825-5512
800-822-6228
www.energy.ca.gov

ORDER DENYING RECONSIDERATION

Order No. 06-0201-17

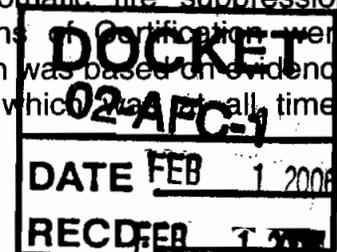
BLYTHE ENERGY PROJECT, PHASE II
APPLICATION FOR CERTIFICATION
DOCKET NO. 02-AFC-1

Background: On December 14, 2005, the Energy Commission adopted the Presiding Member's Proposed Decision (PMPD) and Errata, thereby granting certification to the Blythe II Energy Project. On January 13, 2006, Intervenor Carmela Garnica timely filed a Petition for Reconsideration. In the Petition for Reconsideration, the Intervenor refers to a document she filed on December 19, 2005, entitled "Demand to Correct or Cure Violations of the Bagley-Keene Open Meeting Act." On January 23, 2006, the Intervenor filed a "Request for Continuance of Carmela F. Garnica." On January 25, 2006, the Chairman issued an Order Denying Request for Continuance of Commission Hearing on Reconsideration.

Since all of the Intervenor's post-certification filings include contentions of procedural or substantive error in the Commission's adoption of its Decision in this matter, the Commission hereby consolidates its discussion, findings, and disposition of the Intervenor's filings.

Petition for Reconsideration: The Intervenor's Petition for Reconsideration contends that after the Decision was adopted she discovered information that the operator of the Blythe I project has been fined by the U.S. Department of Labor, Occupational Safety & Health Administration (OSHA) for ammonia handling incidents. The Petition asserts that this information, when added to the newspaper article in the evidentiary record regarding the closure of Interstate-10 due to a Blythe I ammonia handling incident, demonstrates public and worker safety hazards exist. Intervenor contends these hazards are not adequately addressed for Blythe II since the Decision authorizes the use of anhydrous ammonia for the inlet chilling process.

The Petition quotes a portion of the Errata (Decision, pp. 373 & 374) that responded to comments made by the Center on Race, Poverty & the Environment that were critical of the PMPD's authorization of the use of anhydrous ammonia for the inlet chiller process. The Errata, however, also states that the Blythe II project will use only 15 percent of the anhydrous ammonia used by Blythe I. (p. 373). The remainder of the Errata clarifies that the Commission has also imposed numerous conditions not included in the Blythe I Decision, such as the preparation of an Ammonia Refrigeration Hazard Reduction Plan under EPA guidelines, plus automatic fire suppression systems and closure devices. (p. 374). These Conditions of Certification were originally contained in the PMPD, and the narrative discussion was based on evidence in the record, most notably the Final Staff Assessment, which was at all times available to the Intervenor.



Finding: In response to the Petition for Reconsideration (filed 1/13/06), the Commission adopts the following finding:

1. Intervenor's asserted new information of OSHA violations at Blythe I is at most duplicative of the evidence regarding anhydrous ammonia handling incidents at Blythe I already in the record. These incidents were considered by the Commission and resulted in a very significant reduction in the amount of ammonia to be used by Blythe II, as well as conditions imposing additional mechanical and operational safeguards compared to Blythe I. These measures are sufficient to reduce potential impacts to a level of insignificance. Thus, Intervenor's information does not support granting her Petition for Reconsideration.

Request for Continuance: On January 20, 2006, the Commission filed and served its Notice of Commission Hearing on Reconsideration, scheduling a public hearing for February 1, 2006. Intervenor Garnica filed her Request for Continuance on January 23, 2006, requesting that the hearing be indefinitely postponed until after project approvals by the U.S Environmental Protection Agency (EPA). Intervenor Garnica refers to the Mojave Desert Air Quality Management District's (MDAQMD) submittal (1/5/06) to the U.S. EPA requesting appropriate approvals associated with the Blythe II project. The Commission interpreted the Intervenor's Request for Continuance to include a contention that such EPA approvals were a necessary precondition to the Energy Commission's certification of the Blythe II project and that the Decision be reconsidered on that basis.

The Errata, however, responded to comments by the U.S. EPA asserting that its approval was required for the use of road paving to offset PM₁₀ emissions and interpollutant tradeoff ratios. The Errata changed Air Quality Conditions AQ-C9 and AQ-18 to expressly state the requirement for EPA approvals derived from the MDAQMD Regulations. Rather than ignoring the EPA comments, the Errata thus adopted them as part of the PMPD and final Commission Decision.

The Air Quality Conditions of Certification, in general, and Conditions AQ-C9 and AQ-18, in particular, do not defer mitigation nor delegate the Commission's compliance monitoring responsibilities. In accordance with existing District Regulations, the U.S. EPA is tasked with approving road paving offsets for PM₁₀ and interpollutant tradeoffs. The Commission's Decision requires that the project fully mitigate potential air quality impacts in accordance with established regulations. The Project Owner must submit verification to the Energy Commission that it has complied with the Decision's Conditions. None of the Intervenor's contentions demonstrate that the Decision's Air Quality Conditions of Certification will not comply with applicable law and regulations or fail to fully mitigate potential air quality impacts.

Finding: In response to substantive matters raised in the Request for Continuance (filed 1/23/06), the Commission adopts the following finding:

2. Intervenor's Request for Continuance to await Reconsideration of the Decision until after certain U.S. EPA approvals is not supported by applicable law. The Decision does not constitute an impermissible delegation of the Commission's authority or deferral of a determination of needed mitigation.

Demand to Correct or Cure Violations of the Bagley-Keene Open Meeting Act: On December 19, 2005, Intervenor Garnica filed her Demand asserting that the Energy Commission violated the Bagley-Keene Open Meeting Act by not providing her 10-days notice of what she contends are the Errata's substantial changes to the PMPD, including the changes to the Air Quality Conditions of Certification discussed above.

On October 21, 2005, the Blythe II Committee publicly issued the PMPD, beginning a 30-day public comment period. The U.S. EPA filed comments on the PMPD by letter dated November 23, 2005. In response to the comments submitted at the end of the public review period, the Committee filed and served by first-class mail its Notice of Committee Workshop on Presiding Member's Proposed Decision on December 1, 2005. This Notice scheduled a public workshop to be held on December 13, 2005. At the same time, the Committee also filed and served the Notice of Commission Hearing, scheduled for December 14, 2005, to consider adoption of the PMPD and possible Errata. Both Notices included a teleconference number for remote participation, were simultaneously posted on the Energy Commission's internet website, and were electronically served upon parties who had provided an email address. Even though she was served a paper "hard" copy of both Notices, Intervenor Garnica had not provided an email address allowing her to receive electronically notices and papers filed in the proceeding. The transcript of the December 13 workshop demonstrates that Intervenor Garnica did not participate by telephone, nor did she file any written comments.

At the conclusion of the workshop, the Committee published an Errata containing recommended changes to the PMPD. That Errata was filed and electronically served upon all parties providing email addresses, which did not include Intervenor Garnica. As the Intervenor's Demand describes, she was separately provided the Errata and EPA comment letter later that day (December 13th) by email once she provided an email address. As stated in her Demand (p. 2), upon receipt of these documents, Intervenor formed her opinion that the Commission "would ignore the US EPA's comments and recommendations." The Errata was simultaneously posted on the Commission's website.

At the public hearing on the Blythe II PMPD, during the regularly-scheduled Commission Business Meeting, the Commission considered the comments of attending and remote participants and adopted the PMPD and Errata. The transcript of the hearing discloses that Intervenor Garnica did not participate by teleconference or any other means at the hearing.

The record of the Blythe II proceeding discloses that more than 10 days notice was provided for both the Committee workshop and the full Commission hearing and that this information was mailed to the Intervenor. The transcript of the workshop and the

text of the Errata confirm that the Committee did not make substantial substantive changes to the PMPD. Thus, the Errata did not “revise” the PMPD in a way which would have warranted republication of the PMPD and an additional public comment period prior to full Commission consideration and adoption. (See, 20 Cal.Code Regs. §1753.) Moreover, the transcript of the workshop and the Errata disclose that Intervenor Garnica’s characterization that the Commission was ignoring the U.S. EPA comments is incorrect. Rather, during the workshop, the EPA expressed satisfaction at the restatement of the EPA’s approval role, which was included in the Errata.

Findings: In response to the substantive matters raised in the Demand to Correct or Cure Violations of the Bagley-Keene Open Meeting Act (filed 12/19/05), the Commission adopts the following findings:

3. The Commission has fully satisfied the requirements of the Bagley-Keene Open Meeting Act in providing more than 10 days notice of its public hearing to adopt the PMPD and Errata.
4. Provisions of the Errata made no material substantive changes to the PMPD.
5. Intervenor Garnica was provided Errata and EPA comments by email on December 13, 2005.
6. Intervenor Garnica did not participate in the Commission’s December 14, 2005, adoption hearing in any manner.
7. The record persuasively supports the conclusion that the Errata adopted the EPA’s comments by restating the applicable law and regulations in Air Quality Conditions AQ-C9 and AQ-18.

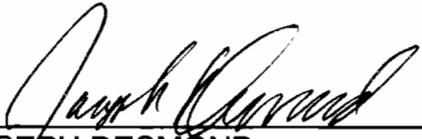
///
///
///
///
///
///
///
///

ORDER

Therefore, the Commission ORDERS the following:

1. Intervenor Garnica's Petition for Reconsideration of this Decision is denied; and
2. Intervenor Garnica's Request for Continuance and Demand to Correct or Cure Violations of the Bagley-Keene Open Meeting Act do not support reconsideration of this Decision and are denied.

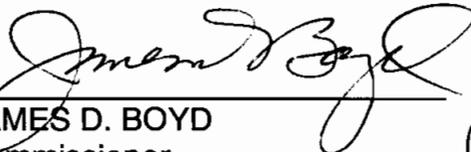
Dated February 1, 2006, at Sacramento, California.



JOSEPH DESMOND
Chairman



ARTHUR H. ROSENFELD
Commissioner



JAMES D. BOYD
Commissioner



JOHN L. GEESMAN
Commissioner



JACKALYNE PFANNENSTIEL
Commissioner

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

IN THE MATTER OF:

APPLICATION FOR CERTIFICATION FOR THE
BLYTHE II ENERGY PROJECT

DOCKET No. 02-AFC-1
PROOF OF SERVICE LIST
[REVISED 12/6/05]

DOCKET UNIT

Instructions: Send an original signed document plus 12 copies and/or and electronic copy plus one printed copy to the address below:

CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
Attn: Docket No. 02-AFC-1
1516 Ninth Street
Sacramento, CA 95814-5512
docket@energy.state.ca.us

Also send a printed or electronic copy of all documents to each of the following:

APPLICANT

Caithness Blythe II, LLC.
Attn: Robert Looper
565 Fifth Avenue, 28th and 29th Floors
New York, NY 10017
rlooper@summit-energy.com

Greystone Environmental Consultants Inc.
Attn: Peter Boucher
10470 Old Placerville Rd., Suite 110
Sacramento, CA 95827
pboucher@greystone_consultants.com

Tom Cameron
c/o Power Engineers Collaborative
6682 W. Greenfield Avenue, Ste. 109

West Allis, WI 53214
tlcameron@msn.com
COUNSEL FOR APPLICANT

Galati & Blek, LLP
Attn: Scott Galati, Esq.
Plaza Towers
555 Capitol Mall, Suite 600
Sacramento, CA 95814
sgalati@gb-llp.com

INTERVENORS

Mary Garcia
Salvador Garcia
14035 Orange Drive
Blythe, CA 92225

Socorro Machado
Mario Rivera
17825 Blythe Way
Blythe, CA 92225

Carmela Garnica
12601 Ward Street
Blythe, CA 92225

Efigenia Perez
17819 Blythe Way
Blythe, CA 92225

Floyd P. Wolfe
17240 West Hobson Way
Blythe, CA 92225

CURE
C/O Marc D. Joseph, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, California 94080
mdjoseph@adamsbroadwell.com

INTERESTED AGENCIES

Les Nelson, City Manager
Charles Hull, Assistant Manager
235 N. Broadway
Blythe, CA 92225
Lnelson@cityofblythe.ca.gov
Chull@cityofblythe.ca.gov

CAL ISO
Attn: Jeff Miller
151 Blue Ravine Road
Folsom, CA 95630
jmiller@caiso.com

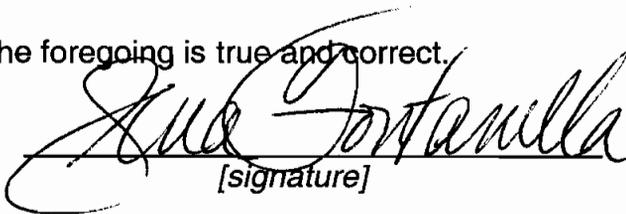
***Caroline Farrell**
Center on Race, Poverty, and the
Environment
1224 Jefferson Street, Suite 25
Delano, CA 93215

***Quenton Hanson**
Executive Director
Small Business Economic
Development Center
145 North Spring Street
Blythe, CA 92225
qhanson@paloverde.edu

DECLARATION OF SERVICE

I, Gina Fontanilla, declare that on February 1, 2006, I deposited copies of the attached Order Denying Reconsideration in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above. Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct.


[signature]

* * * *

INTERNAL DISTRIBUTION LIST

FOR YOUR INFORMATION ONLY! Parties **DO NOT** mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:

JOHN L. GEESMAN
Presiding Member
MS-31

ARTHUR H. ROSENFELD
Associate Member
MS-35

Garret Shean
Hearing Officer
MS-9

Bill Pfanner
Project Manager
MS-16

Lisa DeCarlo
Staff Counsel
MS-14