

To: All Commissioners
Garret Shean

March 9, 2005

From: William M. Chamberlain
Chief Counsel

cc: Service list for 00-AFC-14 (El Segundo Power Redevelopment
Project AFC)

Re: Purported Petition for Reconsideration

This memo recommends that the Commission take no action at all (i.e., not even placing the matter on a business meeting agenda) on a document purporting to be a petition for reconsideration in the El Segundo AFC proceeding, filed by Santa Monica Baykeeper, Inc. and Heal the Bay, Inc. (“Intervenors”).

The Warren-Alquist Act allows the Commission to reconsider AFC decisions on its own motion or upon the petition of a party. Petitions for reconsideration “shall be filed within 30 days after adoption by the commission of a decision” (Pub. Resources Code, § 25530.) The Commission adopted the final El Segundo decision on February 2, 2005, so petitions for reconsideration of that decision were due on March 4, 2005.

On March 4, 2005, at 4:51 p.m., the Commission received, by e-mail, a document that states in its entirety:

Environmental Intervenors, Santa Monica Baykeeper, Inc. and Heal the Bay, Inc., respectfully petition the Energy Commission for reconsideration of the February 2, 2005 Commission Decision on Application for Certification (00-AFC-14), concerning the El Segundo Redevelopment Project for the following issues: (1) BIOLOGY Findings and Conditions, (2) COMPLIANCE with LORS, (3) OVERRIDE of LORS, and (4) ADOPTION ORDER UPON RECONSIDERATION.

Our specific concerns have been well-documented in the record and they have not been remedied by the latest decision. We hereby incorporate all of our previous comments by reference into this petition for reconsideration.

The document was apparently sent to the service list for the El Segundo proceeding, as well as the Commission's docket office.

Section 1720, subdivision (c) of the Commission's regulations specifies the requirements for a petition for reconsideration:

The petition for reconsideration shall set forth with specificity the grounds for reconsideration, addressing any error of fact or law.

(Cal. Code Regs., tit. 20, § 1720, subd. (c).) The March 4, 2005 document does not comply with these legal requirements. It does not specify any alleged error of fact or law, nor does it set forth any specific ground for reconsideration. Instead, it merely invites the Commission to wade through "all" of the Intervenor's previous filings, and, necessarily, to speculate about which of the dozens or hundreds of individual points the Intervenor previously raised they might now be relying on. Such a "petition" does not properly invoke the Commission's reconsideration jurisdiction under Public Resources Code section 25530. Therefore, because no valid petition for reconsideration has been filed, I advise the Commission to take no action at all with respect to the March 4, 2005 document.

Taking no action is consistent with the California Supreme Court's views on reconsideration by administrative agencies. In the leading case of *Sierra Club v. San Joaquin Local Agency Formation Commission* (1999) 21 Cal.4th 489, the Court explained that the purpose of a petition for reconsideration is "to call to the agency's attention errors or omissions of fact or law in the administrative decision itself *that were not previously addressed in the briefing*, in order to give the agency the opportunity to correct its own mistakes before those errors or omissions are presented to a court." (21 Cal. 4th at p. 510, emphasis added.) In contrast, the Court indicated, where all arguments have already been made to the administrative agency and a final decision has been reached on those points, reconsideration serves little purpose:

In cases such as this . . . the administrative record has been created, the claims have been sifted, the evidence has been unearthed, and the agency has already applied its expertise and made its decision as to whether relief is appropriate. The

likelihood that an administrative body will reverse itself when presented only with the same facts and repetitive legal arguments is small. . . . [¶] Over 50 years ago, the United States Supreme Court suggested that: "motions for rehearing before the same tribunal that enters an order are under normal circumstances mere formalities which waste the time of litigants and tribunals, tend unnecessarily to prolong the administrative process, and delay or embarrass enforcement of orders which have all the characteristics of finality essential to appealable orders." [Citations.] We agree.

(21 Cal. 4th at pp. 501, 503.) It is clear that nothing in the Warren-Alquist Act, the Commission's regulations, or the case law requires the Commission to extend its proceedings, and to delay the finality of its decisions, upon the filing of a document that provides no new evidence and no new arguments, and does not even set forth grounds for the Commission to modify its decision except by a limitless reference to four years' worth of oral and written submissions to a voluminous record. I strongly advise that the Commission take no action with respect to the document filed by Santa Monica Baykeeper, Inc. and Heal the Bay, Inc.