



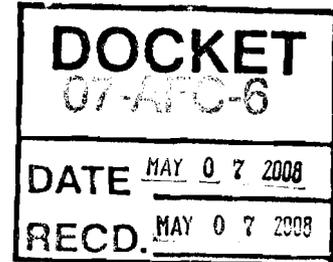
980 Ninth Street, Suite 1900
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

May 7, 2008

KIMBERLY J. HELLWIG
kjhellwig@stoel.com

VIA E-MAIL AND HAND DELIVERY

Mr. Michael Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814



**Re: Carlsbad Energy Center Project (07-AFC-6)
Response to City of Carlsbad's April 25, 2008 Memorandum/Status Report 1**

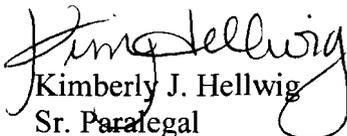
Dear Mr. Monasmith:

On behalf of Carlsbad Energy Center LLC ("Applicant"), submitted to you for docketing is a copy of Applicant's response to the City of Carlsbad's April 25, 2008 Memorandum and Status Report 1. As noted on the original letter, a copy thereof will be sent to all parties identified on the current proof of service list via email.

Should you have any questions regarding this submittal, please contact me at (916) 447-0700.

Respectfully submitted,

Stoel Rives LLP


Kimberly J. Hellwig
Sr. Paralegal

KJH:kjh
Enclosure

cc: See Proof of Service List [Rev. 03/19/2008]

1817 Aston Avenue, Suite 104
Carlsbad, CA 92008

Direct: (760) 710-2144
Fax: (760) 710-2158

Carlsbad Energy Center LLC

May 7, 2008

The Honorable James D. Boyd
Vice Chairman, Presiding Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: Carlsbad Energy Center Project (07-AFC-6)
Applicant's Response to City of Carlsbad's April 25, 2008 Memorandum**

Dear Commissioner Boyd:

Carlsbad Energy Center LLC ("Applicant") has received the Memorandum dated April 25, 2008 from the City of Carlsbad ("City") addressed to you regarding the Carlsbad Energy Center Project ("CECP"). The City's Memorandum asserts there are technical and land use issues with the CECP at the Encina Power Station ("Encina"). Applicant believes all issues raised by the City can be resolved and remains committed to working with the City and the community so that this very important and environmentally beneficial project can be developed at the Encina site. Below Applicant examines each of the City's objections and demonstrates that all issues raised by the City can be resolved appropriately in order to meet the region's documented energy needs while fully mitigating any potential local effects to Carlsbad's citizens in accordance with long standing, frequently applied California Energy Commission ("CEC") principles and legal guidelines.

Land Use

The City asserts the CECP does not conform to land use regulations, including Specific Plan 144, the Agua Hedionda Land Use Plan, and the South Carlsbad Coastal Redevelopment Plan. However, the Land Use section of the Application for Certification for the CECP demonstrates how the project will conform. Further, in Applicant's Data Responses, Set 1A, the factual compliance with all LORS is thoroughly analyzed. Additionally, Applicant is preparing yet another comprehensive land use analysis that soon will be docketed in response to the City's subsequent May 1, 2008, land use letter to Mike Monasmith.

The City characterizes the CECP as inconsistent with the City's "vision" for the Encina property. This vision is described in the City's May 1, 2008 land use letter as future "publicly-oriented, non-utility land uses." However, no specific information is provided nor is there any explanation of why the CECP cannot be a part of that vision. Further, the City does not dispute that the CECP may in fact facilitate such a vision by shutting down three of the five existing steam boiler units and provide a cost-effective transition of electrical infrastructure from the western Encina properties to the eastern portion between the railroad tracks and Interstate 5 ("I-5").

The City has long recognized and consistently documented a vision consistent with the primary goals and objectives of the CECP. For example, on February 19, 2002, the City adopted Housing and Redevelopment Commission Resolution No. 351. This resolution approved the work plan for the development of a land use strategy for the South Carlsbad Coastal Redevelopment Project Area. The adopted work plan included the following statement:

"The City and Redevelopment Agency's objective is to work towards the complete demolition of the existing Power Plant at its current location on the existing site and provide for construction of a new, physically smaller Plant towards the rear of the existing site. **The City and Agency's top preference is to have the new Power Plant constructed within the area between the railroad tracks and Interstate 5, which is east of the existing Plant site.** With demolition of the existing Power Plant and construction of a new Plant to the rear of the existing site, excess development property will be created which is located in a prime coastal location. It is staff's opinion that this excess property could be used for both private and public land uses."
[Emphasis added.]

This same objective to "[f]acilitate the redevelopment of the Encina Power Generating Facility to a physically smaller, more efficient power generating plant" can also be found in the 2006 City approval of Precise Development Plan 00-02, as well as the Five-Year Implementation Plan of the South Carlsbad Coastal Redevelopment Area approved by the City on January 17, 2006. None of these vision statements and purposes have been amended or superseded. Moreover, the City is on record in support of furthering public facilities on the Encina Power Station site and its utilization of existing power generating infrastructure by approving and advocating the independent Poseidon Resources desalination plant, which would utilize a portion of the existing power generation infrastructure, namely the ocean intake and discharge system requiring more than 300 million gallons daily of ocean water intake. Certainly, a 50 million gallon per day seawater desalination facility located west of the railroad tracks is not different in kind to the combined cycle repowering in the industrialized corridor east of the tracks adjacent to I-5. Finally, the location of the proposed CECP east of the tracks along I-5 is consistent with the placement of industrial, public service equipment such as the Encina Wastewater

Authority treatment plant located approximately one mile south of the Encina Power Station.

The above-described documented vision of the City was properly considered and evaluated in an open, public process, and ultimately approved, by the City Council several times over the past eight years. An arbitrary change in that vision at this time and without any basis or justification is disingenuous at best, and probably suggests the City is trying to block the project regardless of its merits and mitigation. The City's suggestion that the project could be relocated elsewhere merely shifts the impacts elsewhere, resulting in an inefficient use of existing power grid resources, environmentally unsound impacts to greenfield locations, and interference with the most timely and environmentally sensitive solutions to the documented regional energy needs.

Additionally, the City's newly described vision of the Encina site without any power infrastructure is simply unrealistic considering San Diego's electrical system has been built around Encina for more than 50 years. The result of having Encina as the electrical hub for San Diego has resulted in significant and very costly electrical infrastructure that provides electrical reliability for the region even when the existing Encina power units are not operating. Relocating that entire critical infrastructure requires a project like CECP to facilitate its relocation. A project at an indeterminate alternative location will require its own new electrical, gas, water, and sewer infrastructure, as it will not relocate such equipment at the Encina site. A complete greenfield power generation source is not achievable in a reasonable timeframe or a cost effective method of meeting the region's energy requirements. The most cost effective and feasible solution to efficiently utilize existing electrical infrastructure is to move it to the eastern portion of the Encina Power Station via the CECP.

Simply put, attempting to achieve a vision of no power infrastructure at Encina would result in seriously jeopardizing the regional electrical reliability situation for San Diego and cost the electrical ratepayers substantial sums of money for no other purpose than to move electrical infrastructure. Applicant is compelled to press forward with this important project as it delivers on the region's need for new, efficient power generating resources with an environmentally superior technology and design.

Through the replacement of three of the five existing power generating units at Encina and locating two new, physically smaller and more efficient combined cycle units in the eastern portion of the property between the railroad tracks and I-5, the CECP goes a long way to seeing the City's long standing documented vision come to fruition. At the same time, the CECP yields significant environmental benefits in the form of marine life protection by retiring aging boiler units and their once-through cooling systems and through significant greenhouse gas performance improvements by installing new generators that are 30 percent more fuel efficient than the older units.

Finally, the Applicant is confident that, through the Warren-Alquist Act and the CEC's Application for Certification process, the CECP will conform to all applicable land use requirements and that the project will be approved by the CEC.

Water & Wastewater

CECP has significantly reduced its water needs in response to concerns from the City related to reclaimed water supply. Regardless of that change, the City's position is that reclaimed water is not available for the CECP because of a potential undocumented, over-commitment during peak summer usage. As a reliable water supply is necessary to the successful development of the CECP, we must consider alternative water supplies, notwithstanding the Applicant's disagreement with the City as to the actual availability of reclaimed water.

Recently, the Department of Water Resources released its final snow survey of 2008 showing snow pack water content at only 67 percent of normal. Governor Arnold Schwarzenegger issued a statement on May 1, 2008, that said:

"I have proposed a comprehensive approach to address our statewide water crisis that includes water conservation, more surface and groundwater storage and new investments in our aging water infrastructure. These actions are vital to protect our environment, economy and quality of life."

In response to the Governor's announcement, and based on the City's position that sufficient reclaimed water supply is unavailable to CECP at the Encina Power Station site, the Applicant soon will be proposing a small onsite desalination unit as an alternate water supply for the CECP project. This desalination unit will be smaller than the existing desalination intake and discharge presently authorized to the Encina Power Station by the San Diego Regional Water Quality Control Board. The Applicant will provide detailed information on this water availability alternative within the next few weeks.

This change in proposed water supply will obviate the need for a long term commitment for water supply from the City and will eliminate the need for utilizing the City's wastewater infrastructure. Therefore, this project change will entirely eliminate the water and wastewater obstacles described by the City in its letter.

Visual Resources

The CECP is designed to be a low-profile, well-screened, and visually unobtrusive project. The CECP takes advantage of the 30 foot below grade fuel oil tank containment berms, adjacent freeway and railroad uses, and existing terrain and trees to screen the project from vantage points around the area. This extensive mitigation is well

demonstrated in the CECP Application for Certification through numerous project visual simulations.

Further, CECP continues to work closely with Caltrans representatives on the possible future widening of I-5. Commencement of the I-5 widening project is a number of years away and has not yet completed any California Environmental Quality Act processes, as Caltrans is presently considering alternative configurations, which may require that Caltrans acquire or encroach into portions of Encina Power Station property by extending its right of way toward the CECP. However, Caltrans is presently exploring ways to reduce the extent of any encroachment or potential acquisition of any Encina Power Station property, which will enable CECP to retain, enhance, or replace its visual screening along the I-5 side of the project. Further, Caltrans' current alignments appear to include an elevated carpool lane onramp overpass north of the Cannon intersection. If pursued, this new overpass onramp will in and of itself change the visual baseline in the area with a large, unscreened concrete overpass structure. Applicant will continue to work with the City and Caltrans to resolve any issues related to visual resources and is confident that appropriate mitigations can be achieved cooperatively.

Schedule

Pursuant to the Warren-Alquist Act, the Application for Certification process is specified to be 12-months long. The recent schedule proposed by CEC staff extends that period of time to approximately 16-months. The additional four months is beyond the statutory timelines, but the Applicant is confident that the process can be completed feasibly within that timeframe.

Alternative Sites

Alternative sites were thoroughly studied and the results were reported in a comprehensive Offsite Alternatives Analysis report submitted to the CEC in April 2008. The conclusion set forth provides that the alternative sites do not realistically or functionally meet the project objectives, would result in significant adverse environmental impacts, and are not technically feasible due to several factors, including insufficient electrical transmission capacity. Further, the reclaimed water shortage claimed by the City would not change by locating the project in one of the City proposed alternative sites. Lastly, these sites would result in greater environmental and community impacts relative to the CECP located at the Encina Power Station site.

Because of the reclaimed water supply situation described by the City, the Applicant has explored alternative water supplies. As described above, a feasible water supply solution is to desalinate seawater onsite to serve the CECP's process water needs. Applicant expects to fully describe this alternative in a subsequent submittal within the next few weeks. Needless to say, the CECP would need to be placed along the coast to access seawater for this desalination water supply option (to avoid use of existing potable resources or over committed reclaimed water), which further demonstrates the Encina site

is the most logical location due to its access to seawater for desalination and to reuse the existing electrical generation and distribution infrastructure needed for a power plant.

Quality of Life

The final area the City claims to be an issue is "quality of life." The City asserts the CECP located at Encina would jeopardize Carlsbad's quality of life. Applicant believes exactly the opposite. The reasons are numerous, but the key areas are listed below:

- 1) The CECP facilitates the retirement of the aging Encina Power Station by permanently retiring three of the five existing steam boiler units. Having the new units available, and in conjunction with additional generating resources and transmission solutions, the final two existing steam boiler units can be retired in the foreseeable future. This retirement will yield substantial environmental benefits including:
 - a. Eliminates the lower fuel efficiency of old units and their ability to combust back-up heavy fuel oil thereby resulting in significant air quality benefits;
 - b. Elimination of the three units' need to pump up to 225 million gallons per day of seawater for cooling, resulting in protection of marine life; and,
 - c. Eliminates the 30 percent higher greenhouse gas emissions per unit of power produced from those older units.
- 2) The CECP will result in substantial annual tax revenues to the City of approximately \$5-6 million. Through the South Carlsbad Coastal Redevelopment Plan, more of the tax revenue real property increment can be retained locally to the benefit of Carlsbad.
- 3) The CECP reutilizes the power generation and electrical distribution infrastructure presently at the site and does not require new, offsite infrastructure. This adaptive reuse avoids the otherwise substantial changes and impacts necessary to bring such infrastructure to alternative greenfield sites as suggested by the City.
- 4) The CECP meets the region's need for new, highly efficient electrical generating resources during the years of 2010-2012, which are years where both San Diego Gas and Electric and the California Public Utilities Commission have found to be crucial for new resources to come online to meet the region's growing demand for energy.
- 5) The CECP accomplishes a giant first step for the cost effective relocation of electrical infrastructure from the western portion of the existing Encina Power

Station properties to the eastern industrial corridor between I-5 and railroad tracks.

These extraordinary public benefits simply will not occur without the CECP to facilitate them. In the event CECP does not move forward, the existing Encina facility and its aging steam boiler units will most likely continue to be needed for much longer to maintain electrical system reliability and to backup the state's quest for 20 percent renewable resources by being available when these less reliable renewable resources are not available. Further, if the CECP does not provide for the cost-effective relocation of the electrical infrastructure to the eastern portion of the property, then that infrastructure will stay where it is and will most likely be expanded as part of SDG&E's plan for a new 230 KV transmission line from Rancho Penasquitos.

Further, the ability to combust backup heavy fuel oil in the event of loss of natural gas supply and for reliability testing will continue. The pumping of up to 225 million gallons per day of seawater for cooling will also continue if CECP does not move forward.

As you can see, the CECP actually contributes in a positive manner to the quality of life for Carlsbad and furthers substantial community and environmental benefits if it moves forward. The bottom-line is CECP is the most cost effective, logical, and timely way to achieve the City's vision for the property and maintain electrical system reliability. Nothing in the City's recent letters establishes otherwise. The CEC should remain vigilant to seeing consideration of this project through its process in a timely manner for the betterment of all as fully consistent with the CEC's function and role in meeting our current and future energy demands.

Sincerely,
Carlsbad Energy Center LLC



Tim Hemig
Vice President

cc: The Honorable Karen Douglas, Commissioner, Associate Member
Proof of Service List (attached)

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

Application for Certification for the
CARLSBAD ENERGY CENTER PROJECT

Docket No. 07-AFC-6
PROOF OF SERVICE
(As of 03/19/2008)

DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on May 7, 2008, I deposited in the United States mail at Sacramento, California with first-class postage thereon fully paid and addressed to those identified below **OR** transmitted via electronic mail consistent with the requirements of the California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210 the following documents:

CARLSBAD ENERGY CENTER PROJECT (07-AFC-6) APPLICANT'S RESPONSE TO THE CITY OF CARLSBAD'S APRIL 25, 2008 MEMORANDUM AND STATUS REPORT 1

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-14
Sacramento, CA 95814-5512
docket@energy.state.ca.us

JAMES D. BOYD
Commissioner and Presiding Member
jboyd@energy.state.ca.us

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

DICK RATLIFF
Staff Counsel
dratliff@energy.state.ca.us

Public Advisor's Office
pao@energy.state.ca.us

PAUL KRAMER
Hearing Officer
pkramer@energy.state.ca.us

MIKE MONASMITH
Siting Project Manager
mmonasmi@energy.state.ca.us

INTERESTED AGENCIES

Larry Tobias
Ca. Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
LTobias@caiso.com

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
esaltmarsh@eob.ca.gov

INTERESTED AGENCIES CONT'D.

City of Carlsbad
Joseph Garuba, Municipals Project Manager
Ron Ball, Esq., City Attorney
1200 Carlsbad Village Drive
Carlsbad, CA 92008
jgaru@ci.carlsbad.ca.us
rball@ci.carlsbad.ca.us

Allan J. Thompson
Attorney for City of Carlsbad
21 "C" Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

APPLICANT

David Lloyd
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
David.Lloyd@nrgenergy.com

Tim Hemig, Vice President
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
Tim.Hemig@nrgenergy.com

COUNSEL FOR APPLICANT

John A. McKinsey
Stoel Rives LLP
980 Ninth Street, Ste. 1900
Sacramento, CA 95814
jamckinsey@stoel.com

APPLICANT'S CONSULTANTS

Robert Mason, Project Manager
CH2M Hill, Inc.
3 Hutton Centre Drive, Ste. 200
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

INTERVENORS

California Unions For Reliable Energy (CURE)
Suma Peesapati
Marc D. Joseph
Adams Broadwell Joeseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
speesapati@adamsbroadwell.com

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


Elizabeth Hecox