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November 3, 2008

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VIA HAND DELIVERY AND US MAIL

DOCKET
07-AFC-6
DATE NOV 03 2008
RECD. NOV 03 2008

The Honorable James D. Boyd
The Honorable Karen Douglas
Siting Project Committee
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Carlsbad Energy Center Project (07-AFC-6)
Applicant's Status Report (Pursuant to October 14, 2008 Committee Order)

Dear Commissioners:

Carlsbad Energy Center LLC ("Applicant") submits this Status Report for the proposed Carlsbad Energy Center Project ("CECP") and welcomes this opportunity to apprise the Committee and parties of the ongoing effort to keep CECP's application for certification ("AFC") moving toward California Energy Commission ("CEC") approval.

I. CURRENT ISSUES AND ACTIVITIES

The Staff Assessment phase of this project is nearing completion. CEC Staff is preparing its Preliminary Staff Assessment ("PSA") and the remaining issues will either be resolved by the Staff, or be appropriate to bring to evidentiary hearings. Parties and interested persons have raised questions or concerns in several issue areas, but these issues do not present insurmountable hurdles for CEC approval of this project.

On July 25, 2008, Applicant docketed a Project Enhancements and Refinements document ("PEAR") with the CEC that addressed several issues. The PEAR identified certain project enhancement and refinements relating to the following: water supply (proposed an ocean water purification system as an alternative source to reclaimed water from the City of Carlsbad ("City")); modification of the stack height of the two stacks (revised to 139 feet); San Diego Gas & Electric Company's construction of a new 230kV switchyard; and incorporated tank demolition and remediation into the CECP AFC proceeding.

Both prior to the filing of the PEAR and since that time, two main issue areas, Land Use and Water Resources, remain in contention. Applicant, however, remains optimistic that each issue area can be resolved. Staff has been forward-thinking in its approach of obtaining analyses from

Oregon Washington
California Utah Idaho Colorado Minnesota

each party and remains cooperative and open to considering all views. The specific issue areas are addressed separately below.

A. Visual Resources

The issue has been raised regarding whether the Caltrans Interstate-5 ("I-5") widening project may impact the construction and operation of CECP. Applicant understands Staff's concerns that the I-5 widening project may have a bearing on cumulative impacts related to visual resources. However, because the widening project has yet to undergo a California Environmental Quality Act review (an Environmental Impact Report ("EIR") has not yet been prepared or circulated), Applicant can only speculate as to any potential impacts of the I-5 widening on CECP. Therefore, because the widening of I-5 is purely speculative at this time, it should not be considered as part of the CECP approval process.

Notwithstanding the foregoing, on October 7, 2008, the City submitted a "Visual Impacts and Site Constraints" document to CEC Staff, including visual exhibits that depict the City's idea of the visual imprint of CECP and the I-5 widening project. Applicant is currently preparing visual exhibits and compiling technical information to provide to CEC and the City that outline the inaccuracies and technical deficiencies of the City's October 7, 2008 letter, including the impacts on the City's Vista/Carlsbad Sewer Interceptor Project.

B. Land Use

On May 1, 2008 the City submitted correspondence to the CEC regarding CECP's compliance with land use laws, ordinances, regulations, and standards ("LORS"). Specifically, the City's position is that the proposed CECP does not conform to the City's local land use plans. In response, on June 3, 2008, Applicant filed a comprehensive letter detailing how the project conforms with the LORS cited in the City's May 1 letter. Further, the City provided the CEC with suggestions for two alternative sites for CECP, Maerkle Reservoir and Carlsbad Oaks North. Applicant fully analyzed the viability of these two alternative sites and has demonstrated that they are not viable for CECP. Applicant's alternatives analysis was solid and compliant with all LORS; any remaining work related to the existing CECP site solely involves Applicant and Staff and is focused to address local questions and ideas raised by local residents regarding CECP.

C. Water Resources

The AFC proposed use of reclaimed water to be supplied by the City. During Applicant's discussions with City personnel about reclaimed water supply, prior to and following submission of the AFC, Applicant received no indication from the City that it had no such supply available. Since submitting the AFC, the City has unequivocally stated that its reclaimed water supply is

fully committed to other users and the City is unable to provide reclaimed water to CECP. To that end, Applicant researched the viability of numerous alternative options that do not involve City-controlled resources. Applicant proposed an alternative option (ocean water purification system) in the PEAR, and such a system will provide an alternative source of industrial water for CECP, in addition to the option to use California Code of Regulations Title 22 reclaimed water.

An alternative industrial wastewater discharge path through the existing Encina Power Station ("EPS") ocean-water discharge system is offered in addition to the plan presented in the AFC to discharge plant industrial wastewater through the City of Carlsbad system. This alternative industrial water source and discharge path resolve issues related to the City's position that it has insufficient quantities of Title 22 reclaimed water to meet the industrial water requirements for the Project and the City's position that it does not have sufficient capacity for the Project to discharge wastewater to the City's existing sanitary/industrial sewer system.

Shortly after the filing of the PEAR, Applicant submitted a Report of Waste Discharge ("ROWD") to the San Diego Regional Water Quality Control Board ("SDRWQCB") to begin the NPDES permitting process for the ocean water purification system water source option, in case such an option is necessary to ensure adequate water supplies to operate the CECP. A copy of the ROWD was also docketed with the Commission on August 15, 2008. The SDRWQCB has indicated to Applicant that the ROWD application is complete and the SDRWQCB anticipates completion of a draft NPDES permit in December 2008 for review and comment.

D. Air Quality

Applicant and the San Diego County Air Pollution Control District ("SDAPCD") have been working closely regarding the Preliminary Determination of Compliance ("PDOC") for CECP. The PDOC will require the following from the Applicant:

- Surrender NOx Emission Reduction Credits (ERCs) under a specified schedule linked to the initial startup of the new units.
- Control emissions from the new units to a combination short- and long-term concentration and mass emission levels. The mass emission limits includes limits during normal operation, commissioning activities, and routine startups and shutdowns.
- Install, certify, and operate a continuous emission monitoring system on the new units.
- Record keeping requirements for a variety of facility operating parameters including fuel use, heating value of fuel, and hours of operation for the new units.
- Perform initial and on-going compliance tests on the new units.
- Submit a variety of emission summary reports to the District to confirm compliance with the above requirements for the new units.

Applicant understands that the PDOC will be completed the first week of November 2008.

Staff's Status Report indicates that in addition to the PDOC's requirement that Applicant offset its net increase in nitrogen oxide (NOx) emissions, Staff also recommends Applicant do the following:

> "provide a small amount of emission reduction credits, either from the District offset bank or by funding the creation of new emissions reductions, for particulate matter, volatile organic compounds (VOCs), and sulfur oxides (SOx) to fully mitigate the project's net permitted increase in nonattainment pollutants and their precursors."

(Staff Status Report 2, p. 2.) The Applicant will work with staff to provide the requested offsets and expects to first use its existing inventory of San Diego ERCs to offset the net emission increase of VOC and PM_{10}. Since there is a net decrease in annual SOx emissions associated with the proposed project, there is no need to provide mitigation for SOx. The net emission increase of approximately 7.4 tons/year of PM_{10} for the proposed project is expected to be offset by surrendering a combination of 2.9 tons/year of PM_{10} ERCs and 8.8 tons/year of SOx ERCs. As a precursor to PM_{10}, it is appropriate to use SOx ERCs to mitigate PM_{10}, and the Applicant will prepare an analysis to justify the proposed SOx for PM_{10} interpollutant offset ratio of nearly 2 to 1. The VOC net emission increase of approximately 9.3 tons/year associated with the proposed project is expected to be offset by surrendering NOx and/or VOC ERCs. If NOx ERCs are used, they would be surrendered using San Diego APCD's allowed interpollutant ratios. If it is not possible to obtain all necessary NOx/VOC ERCs to offset VOC net increases, the Applicant will propose further measures including funding an emission reduction/control project.

E. Intervenors

The CEC granted the Center for Biological Diversity ("CBD") intervenor status on September 10, 2008. Thereafter, on September 26, 2008, CBD served Applicant with data requests, to which Applicant timely objected on October 14, 2008. A copy of Applicant's objections was sent to all parties identified on the service list. In addition, in late September 2008, an individual from Alameda County - Mr. Rob Simpson - petitioned for, and was granted, intervenor status in mid-October. To date, Mr. Simpson has not submitted data requests or otherwise participated in the CEC process for CECP. Applicant is uncertain as to the level at which each of the above-identified intervenors intends to participate in the remainder of the CECP AFC proceeding.

F. Data Requests

To date, Applicant has timely responded to all of Staff's data requests, has timely objected to Intervenor's requests. In addition, the Applicant has responded to all City data requests in conformance with Staff requirements. Most recently, on September 11, 2008, the City submitted 80 data requests to the CEC for response by Applicant. Given the CEC's timeframe for issuance of the Preliminary Staff Assessment ("PSA") quickly approaching, CEC Staff evaluated all of the City's data requests and advised Applicant of the specific Data Requests requiring responses in order for Staff to complete the PSA. Staff further advised Applicant that the remainder of the City's Data Requests will be addressed after Staff issues the PSA.

II. PROPOSED SCHEDULE

Applicant is concerned about the potential for delays due to unfounded perceptions that various issues surrounding CECP remain irresolvable. In addition, CEC Staff's increasing number of AFC proceedings currently under review remains a concern to Applicant. That said, however, Applicant appreciates Staff's considerable time spent and efforts made to publish a PSA at its earliest ability. Applicant has made and will continue to make every effort to move forward in this proceeding, providing CEC Staff with any and all information and analyses necessary to resolve issues of concern quickly, with solutions that avoid potential significant impacts to the environment, resources, and the citizens of the State of California. In order to do so, Applicant has enclosed a Proposed Schedule as required by the Committee's October 14, 2008 Status Report Order. (*See* Applicant's Proposed Schedule (and response to Staff's Proposed Schedule) attached hereto.)

Respectfully submitted,

Stoel Rives LLP

John A. McKinsey

JAM:kjh
cc: Mr. Michael Monasmith, Siting Project Manager
Proof of Service List (see attached)

APPLICANT'S PROPOSED SCHEDULE
(Bolded items have yet to be completed)

Event	Committee's Existing Schedule	Staff's Proposed Schedule	Applicant's Proposed Schedule
AFC Data Adequate	31-Oct-07	Same	Same
Site Visit & Informational Hearing	17-Dec-07	Same	Same
Staff Data Requests("DR"), Set 1	N/A	21-Nov-07	Same
CECP DR Responses, Set 1	N/A	21-Dec-07	Same
Data Response & Issue Resolution Workshop, 1	08-Jan-08	24-Jan-98	24-Jan-98
Staff DR, Set 2	N/A	28-Feb-08	28-Feb-08
CECP DR Responses, Set 2	N/A	18-Mar08	18-Mar-08
Data Response & Issue Resolution Workshop, 2	N/A	26-Mar-08	26-Mar-08
Staff Files Status Report 1	11-Apr-08	11-Apr-08	N/A
Staff DR, Set 2A	N/A	8-May-08	8-May-08
Staff DR, Set 3	N/A	29-Aug-08	29-Aug-08
Staff DR, Set 3B	N/A	26-Sept-08	26-Sept-08
CECP DR Responses, Set 2A	N/A	N/A	5-Jun-08
CECP DR Responses, Set 3	N/A	N/A	12-Sep-08
CECP DR Responses, Set 3A	N/A	N/A	21-Oct-08
CECP DR Responses, Set 3B	N/A	N/A	14-Oct-08
Preliminary Determination of Compliance from San Diego Pollution Control District ("SDPCD")	28-Feb-08	24-Oct-08	**7-Nov-08**
Staff Files Preliminary Staff Assessment ("PSA")	4-Apr-08	21-Nov-08	**21-Nov-08**
PSA Workshop (2 days)	Mid-late Apr	16-Dec-08	**18-Dec-08**
Local, State, and Federal Agency Determinations and SDPCD's Final Determination of Compliance	28-Apr-08	22-Dec-08	**10 Jan-09**
Staff Files Final Staff Assessment	30-May-08	21-Jan-09	**1-Feb-09**
Prehearing Conference	Late June 08	None	**12-Feb-09**
Evidentiary Hearings (4 days)	TBD	TBD	**24-Feb-09**
Committee Files Presiding Member's Proposed Decision ("PMPD")	TBD	TBD	**31-Mar-09**
Hearing on the PMPD	TBD	TBD	**24-Apr-09**
Revised PMPD	TBD	TBD	**N/A**
Final Commission Decision	TBD	TBD	**31-May-09**

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 (Revised 10/30/2008)

Carlsbad Energy Center Project (07-AFC-6)

Applicant's Status Report and Proposed Schedule

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
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DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on November 3, 2008, I deposited copies of the attached document in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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

Elizabeth Hecox

Elizabeth Hecox