City of Carlsbad
Office of the City Manager

November 4, 2008

DOCKET
07-AFC-6
DATE NOV 04 2008
RECD. NOV 06 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) - City's Status Report #2

Dear Commissioners:

Pursuant to the Committee Scheduling Order dated October 14, 2008, the City of Carlsbad submits its City Status Report #2 for the Committee's consideration. This status report highlights the work to date on the proposed Carlsbad Energy Center Project (CECP), which is proposed by NRG (Applicant), and the ongoing concerns and objections the City has with the proposed power plant.

Overview

The City of Carlsbad continues to be intensely engaged in the proposed CECP. To this end, the City has filed more than 160 data requests and has submitted several documents to the Energy Commission on key topic areas, including land use, water, and visual impacts. Carlsbad is also aggressively pursuing potential alternate sites for the proposed power plant, and the City believes that viable options exist which, if selected, will result in significantly less impact to the Carlsbad community. The City of Carlsbad continues to believe that coastal property should be used for something other than heavy industry, and recognizing that the proposed CECP is a non-coastal dependent land use, the City opposes the proposed project.

California Coastal Commission

There is, to date, no determination by the Coastal Commission that the proposed project is consistent with the Coastal Act. This is required by the Warren-Alquist Act (Section 30413(d); failure to obtain this consistency ruling could render any CEC Final Decision vulnerable to an appeal to the California Supreme Court. The WA Act requires that the coastal "commission shall participate in those proceedings", and file a report on consistency. The CEC Staff Report on once-through cooling (Report CEC-700-2005-013) states: "The statutory provisions state that the report shall contain 'a consideration of, and findings regarding' seven specific issues, including 'the conformance of the proposed site and related facilities with certified local coastal

programs". In its AFC (page 5.6-4), NRG agrees that a CCC determination of consistency is required prior to the FSA. The legislation does not specify that the report be prior to the FSA, only that the CCC is to participate in the proceedings and issue a consistency report. We believe it would be best to obtain an indication of consistency earlier in the process. We understand that the Coastal Commission has financial constraints, but it would be in the public interest for the Commission, or the Applicant, to help defray the costs of participation. Consistency with the California Coastal Act is an important part of the state's plan for assuring that its resources are protected.

Need for a Comprehensive Preliminary Staff Analysis (PSA)

Over the past year, the CECP has continued to evolve as a project. The most recent evolution occurred in July 2008, when the Applicant submitted substantial project amendments to the CEC. The City is still in the process of reviewing and analyzing these amendments, which impact nearly every facet of the Application for Certification (AFC) review. From the onset of this project, there has been intense citizen interest in this project. In order to provide the community with a clear understanding of the CECP, its impacts, and to minimize potential confusion during later stages of the review process, the City requests that the Committee require a comprehensive PSA. This analysis would include answers to all data requests and input from relevant state agencies, including the California Coastal Commission, Caltrans, and the State Lands Commission. To the extent that certain areas are ignored in a rush to file the PSA, does a disservice to the public. Cognizant that the project changed dramatically with the Applicant's July filing, it is incumbent to fully inform the citizens of the project impacts and resist unnecessary time pressure to prematurely issue this analysis.

Project Changes

As mentioned above, in July 2008, the Applicant submitted several project changes which dramatically altered the proposed CECP. These include:

- Changing the CECP water supply from reclaimed water to sea-water desalination.
- Altering the industrial waste disposal from the City of Carlsbad's wastewater system to the ocean outfall that serves the existing Encina Power Station
- Raising the project stack height from 100 feet to 139 feet
- Incorporating the demolition of used fuel oil tanks in their application
- Proposing a new 230 kV substation in a new location

These amendments prompted numerous data requests from the City. Although CEC staff requested the Applicant file responses to many of the City's data requests prior to the issuance of the PSA, it did not require all of the answers be provided before that document is issued. The data requests continue to be of great concern to the citizens of Carlsbad. A few examples of the 35+ questions that remain outstanding are:

(a) Air Quality. Data Request #74: The City requests the Applicant assess the impacts of burning the heavy residual oil remaining in the bottom of the fuel oil tanks.
(b) Biology. Data Request #81: The City requests the Applicant demonstrate that the desalination plant is an allowed activity under its lease with the State Lands Commission.

(c) Land Use. Data Request # 97: The City is concerned the proposed project will not comply with the requirements of the California Coastal Commission and requests proof of conformance by the Commission.
(d) Waste Management. Data Request #107: The soil under the tanks appears to be laden with oil. The City wants to make sure this soil can be disposed of in an appropriate manner.
(e) Visual. Data Request #114: The City is concerned the Applicant does not show the citizens the foreseen visual impacts from the project, the Caltrans widening of I-5 and the Carlsbad Interceptor plan. The request also includes a showing of vegetation loss.
(f) Water. Data Request #140: The applicant assumes it will obtain an NPDES permit. The City would like assurances this permit can, in fact, be obtained.

Schedule

The City recognizes this project has been in review for nearly a year and that Commission Staff still has not issued a project PSA. The City believes this is a direct reflection of the incomplete nature of the initial AFC and the subsequent submittals by the Applicant. Additionally, NRG's proposal has grown considerably more complex over the past year, which has necessitated the need to move cautiously. Taking into account this complexity, the need to solicit input from other agencies, the desire to provide ample time for review for the community and interested stakeholders, and the general workload of the CEC staff, the City believes that the schedule as proposed by CEC staff is overly optimistic. Furthermore, the City requests that the CEC recognize that the holiday season is approaching, and that the schedule may need to be adjusted in order to maximize public involvement.

Respectfully submitted,

Joe Garuba
Municipal Projects Manager

JG:ad

cc: Proof of Service List (via email or U.S. Postal Service)

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE *CARLSBAD ENERGY CENTER PROJECT*

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 10/14/2008)

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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

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

COUNSEL FOR APPLICANT

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

INTERESTED AGENCIES

Allan J. Thompson
Attorney for the City
21 "C" Orinda Way #314
Orinda, CA 94563

*indicates change

California ISO
P.O. Box 639014
Folsom, CA 95763-9014
e-recipient@caiso.com

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

INTERVENORS

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

Center for Biological Diversity
c/o William B. Rostove
EARTHJUSTICE
426 17th St., 5th Floor
Oakland, CA 94612
wrostov@earthjustice.org

Rob Simpson
Environmental Consultant
27126 Grandview Avenue
Hayward CA 94542
rob@redwoodrob.com

ENERGY COMMISSION

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

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

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Mike Monasmith
Siting Project Manager
mmonasmi@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

***Elena Miller**
Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Andrea Dykes declare that on November 4, 2008, I deposited copies of the attached document in the United States mail at Carlsbad, CA 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.

Andrea Dykes

*indicates change