DOCKET
07-AFC-6
DATE NOV 12 2008
RECD. NOV 12 2008

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:

The Application for Certification for the CARLSBAD ENERGY CENTER PROJECT

Docket No. 07-AFC-6

RESPONSE IN SUPPORT OF MOTION TO COMPEL BY CALIFORNIA UNIONS FOR RELIABLE ENERGY

November 12, 2008

Gloria D. Smith
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Facsimile
speesapati@adamsbroadwell.com

Attorneys for the CALIFORNIA UNIONS FOR RELIABLE ENERGY

2130-007a

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: The Application for Certification for the CARLSBAD ENERGY CENTER PROJECT	Docket No. 07-AFC-6

RESPONSE IN SUPPORT OF MOTION TO COMPEL BY CALIFORNIA UNIONS FOR RELIABLE ENERGY

On behalf of intervenor California Unions for Reliable Energy (CURE), we write in strong support of intervenor Center for Biological Diversity's November 10, 2008, motion to compel responses to its data requests. The Center's October 24 data requests sought highly relevant information concerning the AFC's GHG emissions estimates and assumptions, or lack thereof, and sought clarification on whether the proposed project would rely on liquefied natural gas as a fuel source. On October 14, 2008, the applicant objected and refused to respond. Substantively, the applicant asserted that information on and analysis for the project's GHG emissions exceeded the requirements of CEQA and AB 32. Nothing could be further from the truth and the Committee has an obligation to set the record straight on this issue.

In reality, the AFC is incomplete without such information. By granting the Center's motion, the Committee has an opportunity to correct this omission. The days when applicants could omit disclosing the GHG emissions associated with their projects are over. Indeed, based upon a growing body of agency guidance, comments on specific projects by the Attorney General and trial court decisions, the environmental effects of climate change have unequivocally become a part of the analysis for any project which must comply with CEQA. In this way, SB 97 directed the Office of Planning and Research to prepare guidelines for mitigating GHG emissions for use in CEQA analyses so that agencies may meaningfully analyze the effects posed by each project. These guidelines are in progress. Finally, the Commission itself has docketed a proceeding on methods to integrate into its CEQA process impacts related to power plants' GHG emissions (Docket No. 08-GHG OII-1). In short, disclosure of GHG emissions in CEQA documents is now the status quo.

In its objections, the applicant sought to confuse the issue of disclosing GHG emissions at the fact-finding stage of the proceeding with an analysis of mitigation measures which can only be considered by the Committee as license conditions at the end of the proceeding.[1] The Center is simply requesting that the applicant calculate and disclose its potential GHG

[1] Objections at p. 2, *citing* OPR Technical Advisory, "CEQA and Climate Change" (June 19, 2008).

emissions, along with information on potential LNG use and reliability. Mitigation is not part of the equation at this juncture.

In addition, the applicant's objections based on timeliness are equally unconvincing. As the Center noted in its motion, the applicant filed major amendments to the AFC on July 25, some 90 days after the 180-day period for data requests ran. Given the significance of the AFC amendments, and the numerous data requests they prompted, a request that the Committee now strictly adhere to the rules rings hollow. This is especially true because the applicant will in no way be prejudiced if the Committee grants the Center's motion.

Finally, this case is still very active on other fronts. For example, the applicant and the City of Carlsbad still have numerous issues to resolve, not the least of which concern land use, visual impacts, the switchyard relocation and easements. The applicant was still responding to data requests just a couple of weeks ago, new parties are still intervening, and none of the regulatory agencies, e.g, the water board or the air district have issued draft permits for notice and comment. Given all of the unresolved issues for staff and the applicant to sort through, an order from the Committee requiring the applicant to respond to the Center's data requests will not delay the project. However, even if a small delay did occur, the public interest benefit of having the GHG emission analysis quantified and disclosed as required under CEQA, would certainly offset any brief delay.

CURE urges the Commission to grant the Center's motion to compel.

Dated: November 12, 2008 Respectfully submitted,

_____/S/_____

Gloria D. Smith
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Voice
(650) 589-5062 Facsimile
gsmith@adamsbroadwell.com

Attorneys for the CALIFORNIA UNIONS FOR RELIABLE ENERGY

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of:	
The Application for Certification for the CARLSBAD ENERGY CENTER PROJECT	Docket No. 07-AFC-6

PROOF OF SERVICE

I, Bonnie Heeley, declare that on November 12, 2008, I deposited copies of the attached RESPONSE IN SUPPORT OF MOTION TO COMPEL BY CALIFORNIA UNIONS FOR RELIABLE ENERGY in the United States mail at South San Francisco, California, with first class postage thereon fully prepaid and addressed to the following:

Via U.S. Mail to:

CALIFORNIA ENERGY
COMMISISON
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512

Transmission of the following 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 below.

Via email to:

Docket@energy.state.ca.us
David.Lloyd@nrgenergy.com
Tim.Hemig@nrgenergy.com
Robert.Mason@ch2m.com
Megan.Sebra@ch2m.com
jamckinsey@stoel.com
e-recipient@caiso.com
jgaru@ci.carlsbad.ca.us
rball@ci.carlsbad.ca.us

speesapati@adamsbroadwell.com
wrostov@earthjustice.org
rob@redwoodrob.com
jboyd@energy.state.ca.us
kldougla@energy.state.ca.us
pkramer@energy.state.ca.us
mmonasmi@energy.state.ca.us
dratliff@energy.state.ca.us
publicadviser@energy.state.ca.us
allanori@comcast.net
powerofvision@roadrunner.com

I declare under penalty of perjury that the foregoing is true and correct. Executed at South San Francisco, California, on November 12, 2008.

_____/S/_____
Bonnie Heeley

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX. (650) 589-5062
bheeley@adamsbroadwell.com

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
LOULENA A. MILES
GLORIA D. SMITH

FELLOW
RACHAEL E KOSS

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4715
TEL: (916) 444-6201
FAX: (916) 444-6209

November 12, 2008

Docket Office
California Energy Commission
1516 Ninth Street, Docket No. 07-AFC-6
Sacramento, CA 95814

Re: Docket No. 07-AFC-6; Carlsbad Energy Center Project

Dear Docket Office Clerk:

Enclosed are an original and two copies of Response in Support of Motion to Compel by California Unions for Reliable Energy. This document was previously emailed to the Docket Office.

Please process the document and return a conformed copy in the envelope provided. Thank you for your assistance

Sincerely,

Bonnie A. Heeley

:bah
Enclosures

2130-008a