STOEL RIVES LLP
ATTORNEYS AT LAW

980 Ninth Street, Suite 1900
Sacramento, California 95814
main 916.447.0700
fax 916 447 4781
www.stoel.com

JOHN A. MCKINSEY
Direct (916) 319-4746
jamckinsey@stoel.com

November 20, 2008

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07-AFC-6
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BY HAND DELIVERY AND PER PROOF OF SERVICE

Mr. Paul Kramer, Hearing Officer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Carlsbad Energy Center Project (07-AFC-6)
Applicant's Response to Center for Biological Diversity's Petition for Order Directing Response to Data Requests

Dear Hearing Officer Kramer:

Applicant Carlsbad Energy Center LLC submits the enclosed brief pursuant to your order via email dated November 12, 2008, which directed all parties to submit responses to Center for Biological Diversity's ("CBD") Petition for Order Directing Response to Data Requests ("Petition") on or before November 21, 2008.

While Applicant objects to CBD's requests on various grounds, Applicant fully recognizes the importance of Greenhouse Gas ("GHG") emissions. However, responses to CBD's data requests are not required to determine whether the Carlsbad Energy Center Project complies with all laws, ordinances, regulations, and standards as required pursuant the Warren-Alquist Act and the California Environmental Quality Act. Moreover, neither of these Acts currently requires the level of analysis of GHG emissions that CBD has requested in its data requests. Nevertheless, notwithstanding Applicant's objections (as detailed in the attached response to CBD's Petition), Applicant is willing to respond to certain data requests provided information to do so is readily available to the Applicant and its consultants, the information is relevant to the proceeding, and if the Committee so orders. Applicant's offer to provide any responses is cooperative given the lack of legal requirements and the timing of CBD's requests.

Oregon Washington
California Utah Idaho Colorado Minnesota

Applicant looks forward to the Committee's ruling on CBD's Petition and is prepared to respond to any inquiries the Committee may have regarding this matter.

Respectfully submitted,

for John A. McKinsey

JAM:kjh
Enclosure
cc: See Attached Proof of Service

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**

CARLSBAD ENERGY CENTER LLC'S RESPONSE TO CENTER FOR BIOLOGICAL DIVERSITY'S PETITION FOR ORDER DIRECTING RESPONSE TO DATA REQUESTS

November 20, 2008

John A. McKinsey, Esq.
Melissa A. Foster, Esq.
Allison D. Cook, Esq.
Stoel Rives LLP
980 Ninth Street, Suite 1900
Sacramento, CA 95814
Phone: (916) 447-0700
Facsimile: (916) 447-4781

Attorneys for CARLSBAD ENERGY CENTER LLC

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**

CARLSBAD ENERGY CENTER LLC'S RESPONSE TO CENTER FOR BIOLOGICAL DIVERSITY'S PETITION FOR ORDER DIRECTING RESPONSE TO DATA REQUESTS

Pursuant to Hearing Officer Paul Kramer's November 12, 2008 Order, Applicant Carlsbad Energy Center LLC ("Applicant") herein responds to the Center for Biological Diversity's ("CBD") Petition for Order Directing Response to Data Requests ("Petition").[1]

BACKGROUND

On or about September 26, 2008, Applicant received CBD's data requests related to the Carlsbad Energy Center Project ("CECP"). Applicant timely objected to such requests via letter dated October 14, 2008 and incorporates such objections herein by reference. (*See* Declaration of William Rostov in Support of Petition at Exhibit B.) Subsequently, on November 10, 2008, CBD filed a Petition for Order Directing Response to Data Requests and Intervenor CURE filed its Supporting Response on November 12, 2008.

ARGUMENT

Many of CBD's data requests specifically relate to Greenhouse Gas ("GHG") emissions and CBD is, in general, focused on GHG emissions. Several of the data requests are beyond the

[1]Applicant's Response also constitutes its response to California Unions for Reliable Energy's ("CURE") Response in Support of Motion to Compel ("Supporting Response").

scope of the CECP and CEC. Applicant has provided sufficient information regarding CECP's impact on air quality in compliance with the Warren-Alquist Act ("WAA"), the California Environmental Quality Act ("CEQA"), and AB 32. CBD's data requests demonstrate CBD's effort to establish precedent and improperly interject itself into the ongoing Application for Certification ("AFC") review process. There is no established CEC mechanism to address specifically GHG emissions under the current CEC siting requirements, which are consistent with CEQA. Further, Applicant's filing of the Project Enhancements and Refinements document ("PEAR") on July 25, 2008 did not render additional data requests of the type filed by CBD, if any, as the PEAR only addressed a few minor project refinements involving another industrial water source and disposal option (ocean water purification), relocation of the switchyard, revision to stack height, and tank demolition. Applicant is willing, however, to cooperate with CBD and provide responses (either in part or in full, as noted herein) to certain data requests that involve information readily available to Applicant, but only to the extent Applicant is able to do so and such information is relevant to the proceeding, if the Committee so orders. In so offering, Applicant does not waive any of its existing and previously stated objections to CBD's data requests.

A. GHG Analyses in CEC Proceedings

Although efforts are ongoing pursuant to AB 32 to develop a consistent approach to analyzing of GHG by the State - which includes the CEC – the process is continuing and a revision to the approach has not been adopted. Following the enactment of AB 32, Senate Bill 97 amended CEQA, requiring the Office of Planning and Research ("OPR") to prepare guidelines for the mitigation of GHG emissions or the effects of such emissions under CEQA. (Pub. Res. Code § 21083.05.) In the interim, OPR published an advisory regarding CEQA compliance and GHG emissions and their effects. (OPR Technical Advisory, "CEQA and Climate Change," June 19, 2008.) Although the CECP AFC was prepared and submitted prior to OPR issuing its Technical Advisory, Applicant has nevertheless satisfied its responsibilities under CEQA, as outlined by OPR.

While neither the California Air Resources Board nor the CEC has defined thresholds of significance for GHG emissions, CEQA requires emissions be disclosed and mitigated to the extent feasible when the lead agency determines a project contributes to a significant, cumulative climate change impact. (*Id.* at p.4.) Consequently, "lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO_2 and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities." (*Id.* at p.5.) Applicant has made a good-faith effort to provide the CEC with all available CECP's GHG emissions information. CEC Staff has not requested additional information from Applicant regarding CECP's GHG emissions and is proceeding with its evaluation of the CECP's potential environmental impacts, including those related to climate change. In fact, the information already provided by Applicant allows for the in-depth analysis of CECP and GHG emissions associated with CECP, if any, allowing the CEC to fully comply with OPR's Technical Advisory.

B. Specific Objections to CBD's Data Requests

Applicant objects to each of CBD's data requests set forth individually below.[2]

A-1.[3]

In this request, CBD seeks a full GHG inventory of GHG emissions estimates for CECP. Applicant notes that a full inventory of direct GHG emissions has been provided previously to the CEC in its AFC. Notwithstanding such information already provided, Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA and on the grounds that the request is overly burdensome.

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[2] Applicant recognizes it has a duty to respond to all timely and relevant data requests regarding CECP. (20 Cal. Code Regs. §§ 1207, 1716(b).) Since the CECP AFC was deemed complete or "data adequate" on October 31, 2007, pursuant section 1716(e), Applicant need only respond to requests for information submitted after May 2008 if the Committee determines that good cause exists. (*Id.* § 1716(e).) Contrary to CBD's argument in its Petition, the timeline for an intervenor to request information without proving good cause exists expires approximately 75 days before a PSA is issued. (*Id.*)

[3] CBD's data requests lack a clear numbering sequence. Applicant has therefore identified each "Background" section of CBD's requests using letters of the alphabet. Thus, CBD's first data request becomes "A-1", and so on.

A-2.

This request seeks estimates of CECP's emissions of HFC, PFC, and SF6. Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA and on the grounds that the request is overly burdensome.

A-3.

CBD asks Applicant to discuss mitigation measures to prevent the release of HFC, PFC, and SF6. Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA and on the grounds that the request is overly burdensome.

B-1.

CBD inquires whether CECP will use imported liquefied natural gas ("LNG"). Applicant has previously docketed information related to LNG fuel as requested by the San Diego Air Pollution Control District. Notwithstanding such information already provided, Applicant objects to this request on the basis that it is irrelevant to CEC AFC proceedings in general and the CECP AFC process in particular, and on the grounds that it seeks information beyond the control of Applicant.

B-2.

This request asks Applicant to estimate the amount of LNG to be used by CECP. Applicant objects to this request on the basis that it is irrelevant to CEC AFC proceedings in general and the CECP AFC process in particular, and on the grounds that it seeks information beyond the control of Applicant.

B-3.

This request asks Applicant to list the factors related to the character of use of LNG. Applicant objects to this request on the basis that it is irrelevant to CEC AFC proceedings in general and the CECP AFC process in particular, and on the grounds that it seeks information beyond the control of Applicant.

B-4.

Here, CBD asks Applicant to identify the origin and source of LNG for CECP. Applicant objects to this request on the basis that it is irrelevant to CEC AFC proceedings in general and the CECP AFC process in particular, and on the grounds that it seeks information beyond the control of Applicant.

B-5.

Lastly, CBD requests Applicant to estimate the "full lifecycle carbon footprint" of the use of LNG. Applicant objects to this request on the basis that it is irrelevant to CEC AFC proceedings in general and the CECP AFC process in particular, and on the grounds that it seeks information beyond the control of Applicant.

C-1.

CBD requests Applicant to confirm the calculations of GHG emissions from new equipment. Applicant objects to this request on the grounds that the information has already been provided and the request is answered within the existing AFC documents. Notwithstanding such objections, Applicants offers to respond with what other information it has readily available that would be responsive to CBD's request, if the Committee so orders.

C-2.

This request asks Applicant to provide the two-year period relied upon to calculate emissions. Applicant objects to this request on the grounds that the information has already been provided and the request is answered within the existing AFC documents. Notwithstanding such objections, Applicants offers to respond with what other information it has readily available that would be responsive to CBD's request, if the Committee so orders.

C-3.

CBD asks Applicant to calculate GHG based on the most recent (current) two-year period for units 1-5 and to provide the method for such calculation. Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA

and on the grounds that the request is overly burdensome. Moreover, Applicant objects to this request as the request is ambiguous as to which years it refers.

C-4.

This request seeks the oil versus natural gas use breakdown for all units over the past two years. Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA and on the grounds that the request is overly burdensome. Moreover, Applicant objects to this request as the request is ambiguous as to which years it refers.

D-1.

In this request, CBD asks for an explanation for the significant decrease in NOx and SOx emissions from Units 1, 2, and 3 since 1995 as shown in Table 5.1B-12 of the AFC. Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA. Notwithstanding such objection, Applicant can respond to this data request with readily available information despite its lack of relevance if the Committee so orders.

E-1.

This request seeks an estimate of the remaining useful life of Units 1, 2, and 3 and the useful life of Units 4 and 5. Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA and on the grounds that the request is overly burdensome.

E-2.

This request inquires whether new permits would be necessary to keep Units 1-5 operating throughout their useful life. Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA and on the grounds that the request is overly burdensome. Moreover, Applicant objects to this request as the request is ambiguous and subjective.

E-3.

Here, CBD seeks the annual hours of use of Units 1-5 over each of the past five years (not a five-year average). Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA and on the grounds that the request is overly burdensome. Moreover, Applicant objects to this request as the request is ambiguous as to which years it refers.

F-1.

This request inquires about the reliability need of the area. Applicant objects to this request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA, is ambiguous regarding the "area," is overly burdensome, and seeks information not in the control of Applicant. Notwithstanding such objections, Applicant can partially respond to this data request with what other information it has readily available that would be responsive to CBD's request, if the Committee so orders.

F-2.

This request asks Applicant, if CECP will provide more than the reliability needs of the region, to discuss the ways that the CECP could foster additional growth. Applicant objects to such request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA and on the grounds that the request is overly burdensome. Further, because CECP will not provide more than the reliability needs of the region, the request is irrelevant and therefore no response is required.

G-1.

CBD requests that Applicant provide an analysis of an alternative that could meet the region's needs with a smaller facility, including a calculation of potential GHG emissions from such alternative. Applicant objects to this request on the basis that it is irrelevant as the information sought is not required by the WAA or CEQA, is overly burdensome, and seeks information not in the control of Applicant. Notwithstanding such objections, Applicant can

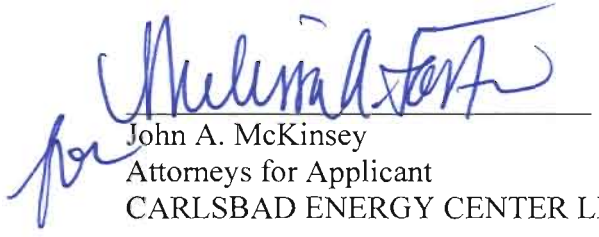
partially respond to this data request with what other information it has readily available that would be responsive to CBD's request, if the Committee so orders.

CONCLUSION

Applicant has made a strong demonstration that CBD's data requests are irrelevant to the CECP AFC proceedings and are not required by law. As shown above , Applicant has significant objections to all of CBD's data requests. Nevertheless, as noted, Applicant does offer to provide information responsive to certain data requests should the Committee find such an offer to be an acceptable resolution of this matter.

Date: November 20, 2008

Stoel Rives LLP



John A. McKinsey
Attorneys for Applicant
CARLSBAD ENERGY CENTER LLC

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 11/19/2008)**

Carlsbad Energy Center Project (07-AFC-6) Applicant's Response to Center for Biological Diversity's Petition for Order Directing Response to Data Requests

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

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

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 the City
21 "C" Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

INTERVENORS

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

Center for Biological Diversity
c/o William B. Rostov
EARTHJUSTICE
425 17th Street, 5th Floor
Oakland, CA 94612
wrostov@earthjustice.org

Rob Simpson
Environmental Consultant
27126 Grandview Avenue
Hayward, CA 94542
510-909-1800
rob@redwoodrob.com

Power of Vision
Julie Baker and Arnold Roe, Ph.D.
P.O. Box 131302
Carlsbad, California 92013
powerofvision@roadrunner.com

ENERGY COMMISSION

Dick Ratliff
Staff Counsel
dratliff@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

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

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

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

DECLARATION OF SERVICE

I, Denise M. Morison, declare that on November 20, 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.

Denise M. Morison