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October 14, 2008

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DOCKET

07-AFC-6

DATE OCT 14 2008

RECD. OCT 14 2008

**Re: Carlsbad Energy Center Project (07-AFC-06)
Objections to Center for Biological Diversity's Data Requests**

Dear Mr. Rostov:

Applicant Carlsbad Energy Center, LLC ("Applicant") received on or about September 26, 2008, Petitioner Center for Biological Diversity's ("Petitioner") data requests related to the Carlsbad Energy Center Project ("CECP"). Applicant objects to Petitioner's Data Requests on several grounds. First, Petitioner's data requests are untimely. Second, much of the information requested by Petitioner exceeds the scope of data and analysis required under the California Environmental Quality Act ("CEQA") and the California Global Warming Solutions Act ("AB 32"). Lastly, Applicant lacks jurisdiction to respond to Petitioner's questions implicating state policy on the need for electrical generating resources.

Applicant recognizes Petitioner's right to participate in the CECP proceedings, as well as Applicant's duty to respond to all timely and relevant data requests about CECP. (20 Cal. Code Reg. §§ 1207, 1716(b).) However, Applicant objects to Petitioner's late filing of data requests for CECP. Under the California Energy Commission's ("CEC") regulations, all requests for information shall be submitted no later than 180 days from the date the CEC determines an application for certification ("AFC") is complete, unless the CEC committee conducting the AFC proceedings allows requests for information at a later time for good cause. (20 Cal. Code Reg. § 1716(e).) The CEC found that the CECP AFC was complete or "data adequate" on October 31, 2007. Therefore, all requests for information from the CEC or other parties to the



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CECP AFC proceedings were required to be filed before May 2008, except for good cause.¹ Petitioner's delay in intervening in the CECP proceeding – almost ten months after the CECP AFC was complete – is not good cause for Petitioner to issue its data requests after the six-month regulatory period for requesting information has passed.

Applicant also objects to Petitioner's data requests on the grounds that Applicant has already provided sufficient information on CECP's impact on air quality to comply with the Warren-Alquist Act, CEQA,² and AB 32. 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 greenhouse gas emissions or the effects of greenhouse gas emissions under CEQA. (Pub. Res. Code § 21083.05.) These guidelines are not expected to be adopted before 2010. In the interim, OPR has published an advisory on CEQA compliance and greenhouse gas emissions and their effects. (OPR Technical Advisory, "CEQA and Climate Change," June 19, 2008.) While the CECP AFC was prepared and submitted prior to OPR issuing its advisory, Applicant has nevertheless satisfied its responsibilities under CEQA, as outlined by OPR.

While there are not currently defined thresholds of significance for greenhouse gas emissions, OPR states that CEQA requires that emissions be disclosed and mitigated to the extent feasible when the lead agency determines that 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 CO₂ 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 information on the CECP's greenhouse gas emissions. The CEC has not requested any additional information from

¹ Applicant received 112 data requests from the CEC within four months of the CECP AFC being accepted as data adequate. The CEC issued 16 additional data requests on May 6, 2008 and August 29, 2008, after the end of the standard 180-day period, that pertained to issues arising after the AFC was deemed data adequate, namely the Interconnection Facilities Study completed by Cal-ISO on June 4, 2008 and the inclusion of oil tank removal and remediation at the project site within the scope of the CECP, at the City of Carlsbad's request. Applicant has also responded to issues of concern and data requests that the City of Carlsbad filed in October 2007 and January 2008.

² The CEC's power plant site certification program is a certified state regulatory program under CEQA. (14 Cal. Code Reg. § 15251(j).)



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Applicant regarding CECP's greenhouse gas emissions and is proceeding with its evaluation of the CECP's potential environmental impacts, including those related to climate change.

Lastly, Applicant objects to several of the data requests, because the information requested falls within the purview of the CEC, as the state's primary energy policy and planning agency.³ Applicant is a private electricity generator and does not have jurisdiction to address electricity reliability requirements for the San Diego region.

It is not Applicant's intention to shirk its responsibility to timely respond to data requests from the Petitioner. However, it is not reasonable for Petitioner, having intervened in the CECP proceedings late in the CEC certification process, to serve data requests on Applicant the same month that the CEC anticipates issuing a Preliminary Staff Assessment for the CECP. Responding to these data requests, however, would do little to further Petitioner's interest in "ensuring the California Energy Commission complies with California Environmental Quality Act," (Center for Biological Diversity's Petition for Intervention, Aug. 28, 2008), which the CEC will be doing as part of its normal processing of the CECP AFC.

With these objections, Applicant has no further intent to respond to the Petitioner's data requests at this time. Should CEC staff or the CEC CECP assigned committee, disagree with this position or request Applicant to address certain specific requests propounded by Petitioner, then Applicant would consider these requests in good faith.

Very truly yours,

John A. McKinsey

cc: Proof of Service, 07-AFC-06

³ The CEC outlines its role and major responsibilities at <http://www.energy.ca.gov/commission/index.html>.

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 9/10/2008)

**Carlsbad Energy Center Project (07-AFC-6)
Letters of Support – Supervisor Slater-Price & South Vista Communities**

CALIFORNIA ENERGY COMMISSION
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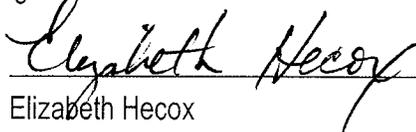
DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on October 14, 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