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April 9, 2009

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VIA EMAIL AND US MAIL

Mr. Joseph Garuba, Municipals Project Manager
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

DOCKET	
07-AFC-6	
DATE	APR 09 2009
RECD.	APR 09 2009

**Re: Carlsbad Energy Center Project (07-AFC-6)
Applicant's Objections to City of Carlsbad's Data Requests, Set 4 (#142-151)**

Dear Mr. Garuba:

On or about March 23, 2009, Applicant Carlsbad Energy Center, LLC ("Applicant") received Intervenor the City of Carlsbad's ("City") data requests related to the Carlsbad Energy Center Project ("CECP"). Applicant objects to the City's Data Requests on several grounds. First, the City's data requests are untimely. Second, much of the information requested by the City exceeds the scope of the CECP CEC AFC proceeding and is therefore irrelevant to such proceeding. Lastly, the City seeks information from Applicant that requires Applicant to hypothesize about projects outside the scope of CECP and their potential effect on CECP.

Applicant recognizes the City's right as an Intervenor 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 the City'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 CECP AFC proceedings were required to be filed before May 2008, except for good cause.¹ The City's delay in officially intervening in the CECP proceeding – some fifteen

¹ Applicant received numerous data requests from the CEC within four months of the CECP AFC being accepted as data adequate. The CEC issued 45 additional data requests after the end of the standard 180-day period. Most recently, such additional requests involved outstanding air



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months after the CECP AFC was complete – and the issuance of ten additional data requests almost three months after CEC Staff issued the Preliminary Staff Assessment (“PSA”) – is not good cause for the City to issue data requests at this late stage in the CECP AFC process.

It is not Applicant’s intention to shirk its responsibility to timely respond to data requests from the City. However, it is not reasonable for the City, having intervened in the CECP proceedings late in the CEC certification process, to serve data requests on Applicant approximately a month prior to the date that the CEC anticipates issuing a Final Staff Assessment (“FSA”) for CECP.

With these objections, Applicant has no further intent to respond to the City’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 the City, then Applicant would consider these requests in good faith.

Very truly yours,

John A. McKinsey

JAM:kjh

cc: See Attached Proof of Service

quality issues that arose after the issuance of the Preliminary Determination of Compliance (“PDOC”) (Staff Data Requests Set Number 4, issued January 22, 2009), to which Applicant responded on February 19, 2009. Applicant has also responded to numerous issues of concern and data requests filed by the City since the AFC was deemed complete.

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 4/08/2009)

Carlsbad Energy Center Project
Applicant's Objections to City of Carlsbad's Data Requests, Set 4 (#142-151)

CALIFORNIA ENERGY COMMISSION
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DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on April 9, 2009, I deposited copies of the aforementioned document in the United State mail at 980 Ninth Street, Suite 1900, Sacramento, California 95814, 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