

**DOCKET****07-AFC-6**DATE JAN 20 2009RECD. JAN 20 2009

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January 20, 2009

James D. Boyd  
Commissioner and Assigned Member  
Karen Douglas  
Commissioner and Associate Member  
California Energy Commission  
1516 Ninth Street, MS-15  
Sacramento, CA 95814-5512

Commissioners:

Enclosed please find the City of Carlsbad "City of Carlsbad Motion for a Staff Revised PSA and Project Schedule Relief", in the above-referenced matter.

Respectfully Submitted:

s/s Allan J Thompson

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and

Ronald R. Ball  
City Attorney  
City of Carlsbad

STATE OF CALIFORNIA  
CALIFORNIA ENERGY COMMISSION

Application for Certification            )  
for the Carlsbad Energy Center        )  
Project                                        )  
\_\_\_\_\_)

Docket 07-AFC-6

City of Carlsbad  
Motion for a Staff Revised PSA  
and  
Project Schedule Relief

Pursuant to 20 CCR 1716.5, Intervener City of Carlsbad hereby files this motion to request that the Committee (a) compel the California Energy Commission staff (Staff) to issue a revised Preliminary Staff Analysis (“PSA”), and (b) to revise the project schedule giving time to allow Applicant, Staff and the public time to evaluate the impacts of the I-5 widening project. A revised PSA would evaluate the almost-certain unavoidable adverse visual cumulative impacts resulting from the construction of the Carlsbad Energy Center Project (CECP) and a Caltrans project and would allow for meaningful public input on that evaluation prior to the issuance of a Final Staff Assessment.

Background

The City of Carlsbad first alerted Staff to the pending Caltrans North Coast Interstate 5 Managed Lanes Project (“Highway I-5 widening”) over fifteen months ago in a letter dated October 24, 2007. In paragraph 22 of that letter, the City stated: “...new power plant design and planning also needs to consider the widening of Interstate 5. Plans should document how the proposal would fit with a widened freeway.” The intent of that statement was to make Staff aware of the City’s belief that there is a potential for conflict between the I-5 widening and the proposed CECP.

Based on Staff comments and direction given to CECP by Staff at the January 8, 2009 PSA workshop, we are now in a position where Staff has recognized the importance of this Caltrans project and its relation to the proposed CECP.

Although Staff requested an analysis of the I-5 widening impacts from CECP, we are left with the prospect of major changes in the CEQA analysis of this project and a schedule that would allow limited public review and input. The proposed CECP project is to submit information and analysis on the impacts of the I-5 widening. This will lead, in our opinion, to a determination by Staff of significant unavoidable impacts. The public, the City of Carlsbad, and we believe the Assigned Committee, will want a thorough review of options once these impacts are identified.

If there is a chance that the City residents will be left with significant impacts, they are owed the opportunity to be fully heard on the issues.

### Caltrans I-5 Widening Project

When complete, the Highway I-5 widening will add 4 high occupancy vehicle lanes over a 26-mile stretch of I-5 in Northern San Diego County. Caltrans conducted public scoping meetings for this project in the cities of Carlsbad, Encinitas, Oceanside, San Diego, and Solana Beach in early 2004. To date, Caltrans has completed the southern portion of this project, including widening of the freeway through the cities of San Diego, Del Mar, and Solana Beach.

Although the EIR for the northern portion of the widening project is in the process of being publicly released (Spring 2009), representatives from Caltrans have been forthcoming regarding plans for widening the I-5 freeway in the vicinity of the CECP. In order to accommodate the widening of the existing eight lane freeway, Caltrans has identified the need to acquire additional right-of-way for the I-5 project, which includes property associated with the CECP.

### Preliminary Staff Analysis

The CECP Application for Certification, filed on September 14, 2007, failed to recognize the Caltrans I-5 widening, and made the statement that the “landscaped berm will effectively screen the CECP site” (Section 5.13.2.2). Additionally, the CECP filed major revisions to the project, including an analysis of the visual impacts of a new switchyard and increased stack height on July 25, 2008, but failed again to acknowledge the I-5 widening project.

On December 11, 2008 Staff issued its PSA for the CECP. In this document, the I-5 widening is mentioned, but not fully analyzed. The Executive Summary (Page I-7) states:

“... at this time, staff cannot determine whether the project as proposed would create a significant cumulative aesthetic impact in combination with the Caltrans North Coast Corridor Interstate 5 Managed Lanes Project (NCC I-5 Project) under CEQA”

However, the Visual Impacts section of the PSA contradicts the above statement and recognizes that a cumulative adverse impact will occur from both projects: “It currently appears that a significant adverse cumulative visual impact is unavoidable” (Page 4.12-27). Although Staff recognizes a significant environmental impact is unavoidable, the PSA fails to deal with the cumulative impacts from these two projects in its PSA as is required as a CEQA-equivalent document.

### PSA Workshop

On January 8, 2009 Staff held a meeting with Caltrans to further discuss this issue and seek greater clarity regarding the extent of the I-5 widening. At the PSA workshop held later that day, Staff made clear their concerns regarding the I-5 project and the CECP, and directed the Applicant to make a filing reflecting the widest possible I-5 expansion scenario and its impacts

to the CECP. As stated above, it is the City's belief the Staff is correct in their assessment that the cumulative impacts of both projects would be severe, and that the Applicant will have to make substantial changes to their project in order to comply with direction given by Staff. The City's request that the Commission require a revised PSA would provide the public with an opportunity to evaluate and comment on the I-5 widening impacts prior to Staff's Final Assessment.

Additionally, the City would like to express its concerns about comments made by the Applicant during the PSA workshop regarding the I-5 widening and CECP visual screening. Those comments reflect the Applicant's belief that if the CEC were to approve the CECP as it is currently proposed, Caltrans would be precluded from widening the I-5 if it were to result in the removal of any project-conditioned visual screening. The City believes that this rationale is faulty and subjects the local community to unnecessary risks. If the CEC approves the CECP, as proposed, visual mitigation would likely constitute screening on the berm between I-5 and the power plant. Subsequently, Caltrans will take the berm. This scenario appears to force a legal confrontation between two state agencies and does not recognize Caltrans' ability to acquire needed right of way. It will also leave the citizens of Carlsbad to live with a long-term significant adverse visual impact.

### Cumulative Impacts

The City of Carlsbad is concerned that as proposed, the CECP does not account for significant negative impacts that will be created due to its construction and the widening of I-5. Now that the potential significant adverse environmental impacts are identified, they must be studied and considered in preparing the PSA. CEQA (or its functional equivalent) encourages this to be done at the earliest time to inform the public and the Commission of the environmental consequences of the project in combination with known or foreseeable future projects. (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 CA 4<sup>th</sup> 713.) Amendment of the PSA would be the appropriate time to do so. The City believes it is appropriate for any solution or mitigation put forward by the Applicant in response to Staff's direction to be analyzed by Staff and then circulated for public review in the form of a Revised PSA. Although Staff has indicated they will hold a workshop following issuance of their Final Staff Assessment to take comments, commenting on their final testimony does not offer the opportunity for the public to have meaningful input into the Commission Staff position. The CEC power plant siting process is designed to be public and transparent. However, in the case of the CECP, significant site constraints and project impacts would not be made public until after the release of the FSA.

### Schedule

Intervener City of Carlsbad respectfully requests that the CECP Assigned Committee direct the California Energy Commission staff to consider the safety and environmental impacts of the CECP in concert with the I-5 widening and to publish its results in a revised PSA. This should include a comprehensive site plan and would allow the public to have the benefit of Staff opinions on the project which would incorporate revisions as proposed by the Applicant. The current project schedule calls for the issuance of an FSA in "late March 2009", followed by a

Prehearing Conference 40-70 days thereafter. If Staff is compelled by schedule to issue an FSA which, for the first time, reflects Staff analysis of the CECP submitted I-5 widening impacts, a revised FSA will likely be required. The Prehearing Conference is likely then to be held closer to 70 days than 40 days. If, on the other hand, Staff is given schedule relief, and can issue a complete Revised PSA, the Prehearing Conference could be held shortly thereafter. The ultimate schedule impacts would be negligible.

Request

The City of Carlsbad requests the Assigned Committee to issue a revised schedule reflecting the addition of a Revised PSA once the CECP files an analysis of the Highway I-5 widening impacts upon the CECP.

January 20, 2009

Respectfully Submitted:

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STATE OF CALIFORNIA

California Energy Resources Conservation  
and Development Commission

Application for Certification )  
for the Carlsbad Energy )  
Center Project )  
\_\_\_\_\_)

Docket 07-AFC-6

Certificate of Service

CALIFORNIA ENERGY COMMISSION

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Declaration of Service

I, Allan J Thompson, declare that on December 30, 2008 I deposited a copy of the attached “City of Carlsbad Motion for a Staff Revised PSA and Project Schedule Relief” in the United States mail with first class postage thereon fully prepaid and addressed to the Energy Commission docket office and sent transmission by electronic mail 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.

January 20, 2009

s/s Allan J Thompson  
Allan J. Thompson