



**EARTHJUSTICE**

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SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

January 30, 2009

**VIA EMAIL**

Mike Monasmith  
Project Manager CECP  
California Energy Commission  
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<b>DOCKET</b>	
<b>07-AFC-6</b>	
DATE	<u>JAN 30 2009</u>
RECD.	<u>JAN 30 2009</u>

Re: Center for Biological Diversity Comments on the Preliminary Staff Assessment for Carlsbad Energy Center Project, Docket 07-AFC-6

Dear Mr. Monasmith,

On behalf of the Center for Biological Diversity (“Center”), this letter makes preliminary comments on the Preliminary Staff Assessment (“PSA”).<sup>1</sup>

The PSA is fundamentally flawed because it finds that Project’s **new** emissions of greenhouse gases (“GHG”) are not a significant cumulative effect pursuant to the California Environmental Quality Act (“CEQA”). The PSA estimates that the Project will emit 846,076 CO<sub>2</sub>-equivalent metric tonnes per year based on the operational limitations proposed by the applicant. (PSA, p. 4.1-101). Yet, the PSA concludes that “it would be speculative to conclude that the project would result in a cumulatively significant GHG impact.” (PSA, p. 4.1-97). This finding is misplaced and is contrary to CEQA. ARB has proposed that any emissions of more than 7,000 tons of GHG for an industrial facility are significant.

The staff reliance on a theory that since the CECP is more efficient than existing boilers, that the project will result in no environmental effect strains credulity and is not supported by substantial evidence. The proposition that the new fossil fuel commitments resulting from power plant construction simply displaces existing higher carbon intensive energy supply has already been rejected under analogous circumstances. In *Center for Biological Diversity v. City of Desert Hot Springs*, RIC 464585, Riv. Sup. Ct. (Aug. 8, 2008), the trial court rejected an EIR’s assertion that a residential and commercial development would have a “beneficial impact on CO<sub>2</sub> emissions” because California homes are more efficient than those elsewhere in the country absent any showing that existing homes would be demolished or remain unoccupied. Here, the staff can make a showing that Units 1-3 will be shut down as a result of the project. As a result,

<sup>1</sup> As we discussed on the phone and as you confirmed by email, CBD is submitting preliminary comments on the PSA to meet the January 30, 2009 deadline. More detailed comments will be submitted by February 6<sup>th</sup>, 2009. Thank for you for accommodating the request for an extension.

Letter to Mike Monasmith  
January 30, 2009

the Project maybe be able to take some credit for the reductions,<sup>2</sup> but without similar proof of other displacement, the staff must find that the emissions from the Project are cumulatively significant.

While the CECP may be more efficient than previous generations of power plants, significant quantities of emissions are still generated that could be further reduced through the adoption of alternatives and mitigation measures. *See, e.g., Center for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1216 (9th Cir. 2008) (noting that new fuel economy rule “will not actually result in a decrease in carbon emissions, but potentially only a decrease in the rate of growth of carbon emissions.”). Because significant greenhouse gas emission reductions from existing levels are necessary to stabilize the climate, we cannot afford to squander any opportunity to adopt feasible mitigation and alternatives that reduce the greenhouse gas emissions from proposed projects. The failure to make a finding of significance improperly cuts off any analysis of project alternatives and mitigation measures. *See Laurel Heights Imp. Ass’n of San Francisco, Inc. v. Regents of University of California*, 47 Cal.3d 376, 403 (1988) (“[A]n environmental impact report must include a meaningful discussion of both project alternatives and mitigation measures”)

In addition to relying on an inappropriate theory, the PSA also fails to quantify all of the greenhouse gas emissions from the CECP. The first step in a greenhouse gas analysis under CEQA is to quantify the emissions resulting from the proposed project. *See* OPR, Technical Advisory, CEQA & Climate Change at 5 (June 2008); CEQA Guidelines § 15144 (a lead agency must “use its best efforts to find out and disclose all that it reasonably can.”). The additional use of LNG at the CECP may result in increased emissions that may be associated with this type of fuel and should be evaluated in the greenhouse gas analysis. CEQA Guidelines § 15358(a) (defining “effects” or “impacts” of a project to include “[i]ndirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable.”); *accord* ARB Staff Workshop Presentation, “Staff Proposal on Greenhouse Gas Thresholds of Significance under CEQA Potential Performance Standards and Measures” (Dec. 9, 2008) at slide 6 (encouraging “lead agencies to include lifecycle emissions where appropriate.”). Although the PSA quantifies construction impacts, the PSA improperly dismisses them as insignificant.

As discussed in footnote 1, these comments are preliminary. Additional comments will be submitted by February 6, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Rostov", with a long horizontal flourish extending to the right.

Will Rostov

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<sup>2</sup> The emissions from the decommissioned Unit 1-3 would need to substitute reductions on one for one basis. The closing of Unit 1-3 should only partially count in any calculation because those Units will not have remained in operation for the projected lifetime of the CECP.



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**APPLICATION FOR CERTIFICATION  
FOR THE *CARLSBAD ENERGY  
CENTER PROJECT***

**Docket No. 07-AFC-6  
PROOF OF SERVICE  
(Revised 1/12/2009)**

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**DECLARATION OF SERVICE**

I, Jessie Baird, declare that on January 30, 2009, I transmitted a copy of the attached Preliminary PSA Comments via 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.

  
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Attachment