



980 Ninth Street, Suite 1900
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

October 12, 2009

MELISSA A. FOSTER
Direct (916) 319-4673
mafoster@stoel.com

VIA HAND DELIVERY AND US MAIL

The Honorable James D. Boyd
The Honorable Karen Douglas
Siting Project Committee
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
07-AFC-6	
DATE	<u>OCT 12 2009</u>
RECD.	<u>OCT 12 2009</u>

**Re: Carlsbad Energy Center Project (07-AFC-6)
Status Report October 12, 2009**

Dear Commissioners:

The Committee's May 11, 2009 Revised Scheduling Order requires all parties to continue to submit Status Reports "every six weeks...until [the Final Staff Assessment has been] filed." To that end, Carlsbad Energy Center LLC ("Applicant") submits this Status Report for the Carlsbad Energy Center Project (the "Project").

CURRENT ISSUES AND ACTIVITIES

Final Staff Assessment & Upcoming Evidentiary Hearings

As noted above, Applicant looks forward to Staff's publication of the Final Staff Assessment ("FSA"). All parties will be able to present information, evidence, and comments to the Committee during the evidentiary hearing phase of this proceeding. Applicant welcomes further direction from the Committee regarding evidentiary hearing deadlines and scheduling after publication of the FSA.

Power of Vision's Data Request and Petition to Compel Response

As reported in Applicant's September 2009 Status Report, Power of Vision ("POV") filed a Petition to Compel Response ("Petition") seeking to compel Applicant to provide the information POV sought in its May 27, 2009 data request. Applicant, subsequently, filed an Opposition to POV's petition, which challenged POV's Petition on various grounds. On September 15, 2009, the Committee issued its Ruling on Intervenor Power of Vision's Petition to Compel Data Responses, granting, in part, POV's Petition. Specifically, the Committee ordered



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Applicant to provide “electronically generated data from the CEMS for Units 1 through 3 for 2003 through 2008.” Pursuant to the Committee’s Ruling, Applicant provided a CD-Rom containing electronically generated CEMS data to POV and served the same on the CECP AFC service list on October 8, 2009.

On September 25, 2009, POV provided correspondence to the Committee entitled “Further Petition to Compel Responses,” seeking the Committee change its September 15, 2009 Ruling to require Applicant to provide POV with CEMS data for 2002 and 2003 that is not electronically available. On October 12, 2009, Applicant timely responded to POV’s Further Petition to Compel Responses.

San Diego Air Pollution Control District – Appeal of Final Determination of Compliance

On October 9, 2009, the Hearing Board for the San Diego Air Pollution Control District (“District”) heard an appeal filed by Robert Simpson regarding the District’s Final Determination of Compliance (“FDOC”) for CECP. The Hearing Board dismissed Simpson’s appeal for lack of jurisdiction on two bases: (1) in its issuance of the FDOC as part of the CEC process, the District did not issue an appealable “permit” within the meaning of District Rule 25; and (2) the FDOC was not a final action by the District that was ripe for appeal, since CEC or the District could revise the conditions presented in the FDOC during the CEC’s FSA and/or evidentiary hearing phases.

Petition to Intervene by the City of Carlsbad Redevelopment Agency

On August 5, 2009, the City of Carlsbad (the “City”) submitted a Petition to Intervene (“Petition”) on behalf of the South Carlsbad Redevelopment Agency (“Agency”). On September 15, 2009, the Committee granted the Agency’s Petition with limitations related to evidentiary hearings and requiring the Petitioner to “consolidate its presentation of evidence and examination and cross-examination of witnesses with the City.”



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CONCLUSION

As always, Applicant is committed to providing, to the extent feasible, information that may assist CEC Staff with moving toward the publication of the FSA. Applicant looks forward to the forthcoming evidentiary hearing schedule.

Respectfully submitted,

Melissa A. Foster

MAF:kjh

cc: See Attached Proof of Service

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 9/24/2009)

Carlsbad Energy Center LLC's
Status Report October 12, 2009

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-4
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@nrenergy.com

George L. Piantka, PE
Carlsbad Energy Center LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
george.piantka@nrenergy.com

APPLICANT'S CONSULTANTS

Robert Mason, Project Manager
CH2M Hill, Inc.
6 Hutton Centre Drive, Ste. 700
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-mail preferred) e-recipient@caiso.com

INTERVENORS

City of Carlsbad
South Carlsbad Coastal Redevelopment Agency
Allan J. Thompson
Attorney for City
21 "C" Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

City of Carlsbad
South Carlsbad Coastal Redevelopment Agency
Joseph Garuba, Municipals Project Manager
Ronald R. Ball, Esq., City Attorney
1200 Carlsbad Village Drive
Carlsbad, CA 92008 (e-mail preferred)
Joe.Garuba@carlsbadca.gov;
rball@ci.carlsbad.ca.gov

Terramar Association
Kerry Siekmann & Catherine Miller
5239 El Arbol
Carlsbad, CA 92008
siekmann1@att.net

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

INTERVENORS

Center for Biological Diversity
c/o William B. Rostove
EARTHJUSTICE
426 17th St., 5th Floor
Oakland, CA 94612
wrostov@earthjustice.org

Power of Vision
Julie Baker and Arnold Roe, Ph.D.
4213 Sunnyhill Drive
Carlsbad, CA 92008-3647
powerofvision@roadrunner.com

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

Public Advisor's Office
publicadviser@energy.state.ca.us

ENERGY COMMISSION

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

KAREN DOUGLAS
Commissioner and Associate Member
kldougl@energy.state.ca.us

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

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

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

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

DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on October 12, 2009, I deposited copies of the aforementioned document in the United States 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