STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: **The Application for Certification for the CARLSBAD ENERGY CENTER PROJECT**	**Docket No. 07-AFC-6**

CARLSBAD ENERGY CENTER LLC'S RESPONSE TO POWER OF VISION'S FURTHER PETITION TO COMPEL RESPONSE TO DATA REQUESTS

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STATE OF CALIFORNIA

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In the Matter of: **The Application for Certification for the CARLSBAD ENERGY CENTER PROJECT**	**Docket No. 07-AFC-6**

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Applicant Carlsbad Energy Center LLC ("Applicant") herein responds to Power of Vision's ("POV") Further Petition to Compel Response to Data Requests ("Second Petition") docketed on September 25, 2009. As detailed below, POV's Second Petition should be denied because the Second Petition is mooted by the Committee's September 15, 2009 Ruling that addresses the contents of the Second Petition, is unlikely to lead to the finding of relevant information, is untimely and lacks good cause, and Applicant has already provided information sought by POV.

I. BACKGROUND

On or about June 1, 2009, Applicant received a request for data ("Request") from POV related to the Carlsbad Energy Center Project ("CECP"). Applicant timely objected to the request, and POV subsequently filed a Petition to Compel Responses ("First Petition"). On September 15, 2009, the Committee issued its Ruling on the First Petition, granting, in part, the First Petition. In the Ruling, the Committee ordered "Applicant shall provide the electronically generated data from the CEMS for Units 1 through 3 for 2003 through 2008. The data may be provided, if available, at a frequency of no more than hourly intervals or may be provided in the raw form that the CEMS systems output." (Committee Ruling at p. 4.)

On September 25, 2009, POV filed a "Further Petition to Compel Data Responses" – the

Second Petition - with the Committee, "urg[ing] the Committee to Amend their Ruling of September 15, 2009 to include the 2002-2003 period." (Second Petition at 1.) Applicant timely opposes and responds to POV's Second Petition as set forth herein.[1]

II. ARGUMENT

Applicant recognizes POV's right as an intervenor to this proceeding, as well as Applicant's duty to respond to all timely and relevant data requests related to CECP. (20 Cal. Code Regs. § 1207, 1216(b).) However, Applicant objects to POV's late filing of any 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 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 Regs. § 1716(e).) The CEC found the CECP AFC was complete or "data adequate" on October 31, 2007. Therefore, all requests for information from the CEC or other parties to this AFC proceeding were required to be filed before May 2008, except for good cause. POV's Second Petition is untimely and no good cause exists to allow further requests for information, especially in light of the Committee's September 15, 2009 Ruling that resolved the Request and First Petition in its entirety.

Applicant objects to and opposes the Second Petition on the grounds that the Second Petition is moot. The information sought by POV in the Second Petition has already been ruled on by the Committee. The September 15, 2009 Committee Ruling on the Request expressly did not include emissions data from the period of 2002-2003 (the "2002-2003 Data") that POV seeks in the Second Petition. The Second Petition does not provide any additional evidence to demonstrate good cause for the Request. Further, the Second Petition and underlying Request is untimely and lacks good cause, and Applicant has already provided information sought by POV.

[1] Since POV has not issued a new "Request" and merely seeks that the Committee amend its September 15, 2009 Ruling, Applicant incorporates by reference herein the arguments and objections set forth in its June 19, 2009 "Objections to Power of Vision's Data Request #1" and its July 14, 2009 "Opposition to Power of Vision's Petition to Compel Response to Data Requests."

A. The Second Petition is Moot Due to the Committee's September 15, 2009 Ruling on the Request.

As noted above, on September 15, 2009, the Committee issued its Ruling on the First Petition, granting, in part, POV's Request. In the Ruling, the Committee ordered "Applicant [to] provide the electronically generated data from the CEMS for Units 1 through 3 for 2003 through 2008" and ruled that such data may be provided, if available, "at a frequency of no more than hourly intervals or may be provided in the raw form that the CEMS systems output." (Committee Ruling at p. 4.) On September 25, 2009, POV filed a "Further Petition to Compel Data Responses" – the Second Petition - with the Committee, "urg[ing] the Committee to Amend their Ruling of September 15, 2009 to include the 2002-2003 period." (Second Petition at 1.) The sole basis for POV's Second Petition is POV's contention that the Committee's "Order did not include the data [POV] requested for the years 2002-2003, which is prior to the installation of the electronically generated data from the CEMS for Units 1 through 3." (Second Petition at 1.) The Second Petition does not include any other information, evidence, or legal basis regarding why the Committee should amend their existing Ruling to include data that they expressly considered and denied in the September 15, 2009 Ruling. Thus, POV's Second Petition is moot.

B. POV's Request is Untimely and POV Lacks Good Cause for its Untimely Request.

CEC regulations require the submission of all requests for information not later than 180 days from the date the CEC determines an AFC is complete, unless the CEC committee conducting the AFC proceedings allows requests for information at a later time <u>for good cause</u>. (20 Cal. Code Reg. § 1716(e).) The CEC deemed CECP's AFC complete on October 31, 2007. Based on this date, all requests for information were required to be filed before May 2008, except for good cause.

POV's Request is untimely by more than twelve months. POV provides no justification for submitting its Second Petition mere days before CEC staff anticipates issuing the Final Staff Assessment ("FSA") for CECP. POV's delay in intervening in the CECP proceeding – some

thirteen months after the CECP AFC was complete – and the issuance of POV's Request seven months after CEC Staff issued the Preliminary Staff Assessment ("PSA") - is not good cause for POV to issue the Request at this late stage of the CECP AFC process.

In addition, the Committee has already indicated that POV's request is untimely and lacks good cause. The Committee noted that "[a] wide ranging hunt for further undiscovered discrepancies in the emissions data is not appropriate at this late stage in this proceeding. Staff is about to publish its [FSA] and the parties must begin to identify, and mark their exhibits, finalize their testimony, and prepare for the evidentiary hearings." (Committee Ruling at p. 4.) POV's Second Petition fails to demonstrate that good cause exists to require Applicant to provide the 2002-2003 Data.

C. POV's Data Request Exceeds the Scope of the Application for Certification Proceeding and Such Request Is Not Likely to Lead to the Finding of Relevant Information.

POV seeks information not available to the public and is beyond the scope of the CECP AFC proceeding. In addition, the information sought by POV will not add value to the AFC process. To the extent that POV holds the opinion that operational data from 2002 and 2003 is relevant to this proceeding, Applicant has already provided a great deal of 2002 and 2003 data for Units 1 through 3, as set forth in Part II.D, *infra.*

D. Applicant Has Provided Data Responsive to POV's Request and Second Petition.

Applicant previously provided responses to POV's Request and, in fact, some data was provided prior to POV's issuance of the Request in late May 2009. Moreover, notwithstanding the Committee's Ruling that Applicant need not provide the 2002-2003 Data at this late stage of the CECP AFC process, Applicant has already provided information sought by POV in the Second Petition. Such information is addressed individually below.

Claim Made by POV: *"Unfortunately, your Order did not include the data we requested for the years 2002 and 2003, which is prior to the installation of the electronically generated data from the CEMS for Units 1 through 3. Access to the data from this period*

is of prime importance to us for our analysis of the pollution offsets and required ERCs for this project, since the 2002 and 2003 period is when the largest emissions occurred, and even a small anomaly in the data from this period will have a marked effect on the offsets."

Response to POV Claim: The claim by POV that the "2002 and 2003 period is when the largest emissions occurred" with respect to emission reduction credits (ERCs) required for CECP is factually incorrect. As shown in the San Diego Air Pollution Control District's (SDAPCD) Final Determination of Compliance (FDOC)[2] at page 24 of 63, the baseline year with the highest annual NOx and VOC emissions (the pollutants relevant to ERCs under the SDAPCD new source review regulations) for the Encina Power Station Units 1 through 3 was 2004. In addition, the highest two-year baseline emission period for Units 1 through 3 (which is not relevant for anything other than POV's claim) is 2004 to 2005.

Claim Made by POV: *"Producing the original hourly data on times of operation, Kw output, fuel consumption and NOx emissions for Encina Power Station Units 1 through 3 for only this brief 15 – 18 month period should not be overly burdensome to the Applicant."*

Response to POV Claim: As discussed in the SDAPCD FDOC at pages 21 and 22 of 63, the baseline NOx emissions for 2002 and a portion of 2003 (period prior to individual boiler CEM system certification/operation) for Encina Power Station Units 1 through 3 were calculated by the SDAPCD using lbs/MW-hr NOx emission factors (either the Rule 69 limit prior to the installation of SCR, or a post-SCR emission factor for the period after the SCR units were installed but prior to certification/operation of the individual boiler CEM systems) and hourly power output levels recorded for each boiler.

[2] August 4, 2009 SDAPCD Final Determination of Compliance for the Carlsbad Energy Center Project (CEC docket log – document number 52707).

This same approach for calculating the baseline NOx emissions for Units 1 through 3 during 2002 and a portion of 2003 was discussed in the Applicant's February 11, 2009 letter to the SDAPCD.[3] This letter included a compact disc with the individual boiler hourly fuel use, operating duration, and power output levels for 2002 and a portion of 2003 (period prior to individual boiler CEM system certification/operation). Consequently, the individual boiler hourly operating data requested by POV in its Second Petition have already been provided and are part of the record for CECP.

III. CONCLUSION

The Committee has already ruled on the information POV seeks in the Second Petition. Moreover, Applicant has made a strong demonstration that POV's Request is untimely and lacks good cause. The additional information requested by POV is not required by law and is unlikely to lead to the finding of additional relevant information. Lastly, in Part III.D, *supra*, Applicant identifies where the 2002-2003 Data has already been addressed or provided. For the reasons set forth herein, Applicant respectfully requests the Committee deny POV's Second Petition in its entirety.

Date: October 12, 2009

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[3] February 11, 2009 letter from Sierra Research to the SDAPCD with attached CD (CEC docket log – document number 50110).

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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 Response to Power of Vision's Further Petition to Compel Response to Data Requests

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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

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I declare under penalty of perjury that the foregoing is true and correct.

Elizabeth Hecox

Elizabeth Hecox