

DOCKET

07-AFC-6

DATE

RECD. JAN 25 2010

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:
Application for Certification for
the Carlsbad Energy Center Project
Carlsbad Energy Center, LLC

Docket No. 07-AFC-6

Public Comment

I would like to file this public comment opposing the above named project. My name is Daniel A. Bowman and I reside at 2887 Camino Serbal, Carlsbad, California. I recently moved to Carlsbad after a 25 year career in Indonesia and Saudi Arabia as an executive for oil and gas and mining companies. I have had extensive experience with the legal, tax, environmental and social aspects of large capital projects. As a senior vice president of a major mining company, most of my time was devoted to assessing, mitigating and explaining the effects of large capital projects to governments, the public, local indigenous inhabitants, academics and other stakeholders.

After having reviewed the Final Staff Assessment ("FSA") and ancillary documents, I conclude that there is something very wrong with the process. I also conclude that the extraordinary recommendation of the staff to overrule the City of Carlsbad's interpretation of its own zoning and land use regulations, and push for the start of construction in just a few weeks indicates that the state agency is an advocate for the utility NRG rather than a guardian of the public good. I find this extremely disturbing as do my fellow citizens and my city government. I believe the FSA is fatally flawed for the reasons stated below.

Lack of Comparative Visual Impact Statement

In the FSA, there is exactly one mention of the phrase "property values" in over 800 pages of analysis.¹ It is in the quirky chapter entitled "Visual Resources" authored by Mr. William Kanemoto, who has degrees in liberal arts and landscape architecture. Mr. Kanemoto's views can be summarized as follows:

1. Residents are known to have "high levels of concern" but that is "typical;"
2. Not many of these typical residents can see the structure so they won't be affected;
3. 200,000 commuters per day will see the structure, but they are too busy driving and won't notice it;
4. NRG can paint the 50 meter smokestacks different colors to camouflage them.

¹ Final Staff Assessment, page 4.12-13.

Mr. Kanemoto, who lives several hundred miles north in Oakland, has graciously offered his aesthetic opinion that it's really not so bad and us "typical" property owners should just get over it. Perhaps the typical sophisticate in Oakland rejoices at the prospect of a chemical plant abutting his Jacuzzi, but I suggest we bumpkins in Carlsbad do not. In fact, the 50-meter smokestacks cannot be "visually mitigated" by trees or berms. Mr. Kanemoto suggests to paint them blue and brown instead! I would say if NRG is going to paint them, at least use Chargers' colors and affix a lightning bolt.

Mr. Kanemoto's analysis also lacks a comparison of the visual aesthetics of a plant constructed on the alternative sites proposed by the city. His entire argument, rather, is aimed at justifying NRG's selected site. It is not a dispassionate analysis, and I submit, is so fantastic and counter-intuitive that a judge examining the issue would take judicial notice of several self-evident facts:

1. There is no way to disguise 50 meter smokestacks;
2. Painting 50 meter smokestacks blue and brown will make them more, not less noticeable;
3. The visual impact of an industrial project located inland is less than the visual impact of one located on a lovely stretch of beach;
4. Given the traffic volume on I-5, millions of people per year will see the incongruous smokestacks smack dab on the beach and wonder why the city would do that to its beach;
5. The proposed project's visual aesthetics would reduce property values city wide.

I respectfully request the staff to withdraw the section entitled "Visual Resources" until such time as it contains a reasonable comparative analysis of the visual aesthetics of alternative locations versus the location on the beach.

Lack of Property Value Impact Analysis

The proposed project's capital cost is approximately \$500 million. The land and property values of the City of Carlsbad are on the order of \$10 billion. The parties with the greatest economic stake in the decision of the staff, therefore, are the citizens and City of Carlsbad, not the utility NRG. Yet, the sole property value analysis is the view of a landscape architect that those pesky typical homeowners should not worry about the price of their houses since the 50 meter smokestacks will be invisible after being painted.²

In July, 2009, I bought a house in Carlsbad for about \$900,000. I have since upgraded it and invested about \$100,000. My investment was predicated on the superior location of Carlsbad, its good city government, rational zoning, clean streets and above all its proximity to the ocean. In choosing the location, I drove up and down the coast and compared areas. My only complaint about Carlsbad was the power plant which was, and is, incongruous, on the coast. My realtor assured me that the plant had to be there because of its need for seawater cooling, but would

² The socio-economic analysis in the FSA indicates a positive economic benefit to Carlsbad, which would be the same whether the plant was located on the ocean or inland at the alternative sites.

soon be torn down in favor of an air cooled plant that did not need to be on the coast. I believe this was the understanding of most if not all Carlsbad residents.

The proposed project will add a new smokestack and a much larger footprint to the existing plant. It will be a visual blight on the coast for many years to come, and, more importantly, a surprise to those who expected there would be no more plant located there in the near future. Millions of commuters each year will see that major industrial construction is occurring on the Carlsbad beach, and assume the area is to become another Long Beach, further eroding perceptions of Carlsbad. The city's zoning plans will be frustrated by an unwanted, non-conforming use, forced upon the city and its citizens by the state.

All this will have a major impact on the value of the biggest asset that the average Carlsbad resident owns (in a time of 10% unemployment), in my opinion. However, my opinion doesn't matter. What matters is that there is a reasoned, supported, economic analysis of the monetary impact on property values from the proposed project. There is none of that in the FSA. I would further venture that the forcing of the plant on the residents, with the objections of their elected representatives, without considering the obvious effect on property values, is a clear regulatory taking. If property values decline by just 1%, that would be a \$100 million loss. The state may not be able to pay that judgment other than in scrip, but I am sure the Applicant has the cash.

Another economic impact to consider is the cost of consultants to justify the siting decision. The file on this project already contains tens of thousands of pages. A law firm like Stoel Rives will probably charge between \$1-5 million for its fees alone. Add all the other consultants, and fees on both sides could be \$20-50 million by the time all the controversies are settled. Of course, the ultimate losers will be the ratepayers who will bear this cost in electricity rates, and that negates any incentive (especially by the consultants) to stop the process. There is no analysis at all of the economic gain to be achieved by a peaceful siting decision reached in cooperation with the City of Carlsbad. I submit that it is unreasonable for the state to continue fighting this until it has done an analysis of all the costs associated with its dictatorial siting decision.

I respectfully request the State to do a "detailed examination of the distribution of impacts on segments of the population"³ which will include a detailed economic analysis of the effect of the proposed project on property values, and the cost avoidance of alternative siting.

Inadequate and Stilted Alternatives Analysis

The most puzzling aspect of the FSA is its blatant advocacy on behalf of NRG. Having drafted a lot of documents like the FSA I can say that the last thing a

³ FSA, Page 1-2: California Statute, Section 65040.12 (c) of the Government Code, defines "environmental justice" to mean "fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."... The steps recommended by these guidance documents to assure compliance with the Executive Order are: ... (3) if warranted, a detailed examination of the distribution of impacts on segments of the population.

regulator wants to do is talk about the avoidance of economic detriment to the Applicant as a justifying reason for the project. Everyone in the environmental-bureaucratic justification game knows that. The staff however is given to superlative denunciation of alternate sites, and cost avoidance rhetoric on behalf of NRG, for the proposed site:

"The use of the existing EPS site would not cause any significant impacts that would be avoided by an alternative location..."⁴

"Based on ...the lack of nearby associated electric infrastructure...the alternative site does not meet the staff's screening criteria and is thus eliminated from further consideration."⁵

"Due to the...need for significant construction and routing of required utility connections... the staff concludes that the Maerkle site fails..."⁶

The most telling comparative analysis is in Alternatives Table 1, on page 6-11 of the FSA. In that table, the distances to available infrastructure are compared as well as the distance to residential infrastructure. It is interesting to note that the deciding factor for eliminating alternatives under Table 1 is not how close the project is to residents, but how far the utilities are located. The staff tries to claim this is an environmental analysis but it is clearly a cost analysis, benefitting NRG. Simply put, the state wants to save NRG money by utilizing existing infrastructure, but it can't say that explicitly.

Another blatant example of the staff's advocacy on behalf of NRG is its use of "straw man" arguments. For example, in several places in the alternatives analysis it is claimed that zoning from the city would be uncertain and thus would argue for the elimination of an alternative site. Obviously, up to this point, the city has bent over backwards to assist the state in alternate site selection as is amply demonstrated by the record.

An overall reading of the alternatives analysis demonstrates that the staff is frantic for some reason to get this project started immediately and shows (at least) imperious impatience with the city's proffering of alternate sites.

I respectfully request the staff to re-examine the alternatives analysis and remove any consideration of economic impact to NRG of the siting decision, or, at least explicitly identify where consideration of that impact is crucial to the siting decision.

A Disrespectful and Imperious Attitude Toward the Citizens

The staff wants construction of the project to start in the first or second quarter of this year.⁷ In order to accomplish this goal, the staff is willing to take the extraordinary step of overriding the Carlsbad zoning ordinances and the strident protestations of the Carlsbad City Council. I have rarely seen a capitalist with enough hubris to try

⁴ FSA, Page 6-1

⁵ FSA, Page 6-5

⁶ FSA, Page 6-8

⁷ FSA, Page 1-2

this, and for a state agency to do it indicates something is rotten in the State of California.

In their words:

“The Commission cannot license a project that conflicts with one or more LORS unless it finds “that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity.” (Pub. Resources Code, § 25525.) This determination must be made based on the totality of the evidence of record and consider environmental impacts, consumer benefits, and electric system reliability.”

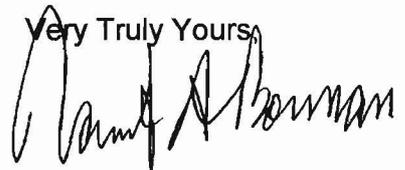
The FSA is, therefore, a finding that there is no more prudent place to build a power plant than right on the beach in Carlsbad, California and by God, it is crucial it start right now. The FSA has no analysis of other cities, or counties. The FSA, as stated above, ignores compelling arguments of the city, misses important points, incorporates fanciful consultant studies, and most importantly, ignores the public. For what reason would such a reckless and dangerous course, in bureaucratic terms, be chosen?

To add insult to injury, the City of Carlsbad wants the plant. There is no NIMBY syndrome here. No one is arguing about the need – only the place. It is as if the state’s pet elephant needed a home, and I was gracious enough to offer to put it up. I’d like to put the elephant out by the back fence. But the state demands, and in fact orders me to put the elephant in the front yard in front of my picture window so it blocks my view and all my neighbors can see it. Even a truckload of consultants could understand why I would be upset.

All the technical analysis in the world cannot disguise the fact that the state energy commission staff is acting in a suspiciously precipitous and undemocratic way. Therefore, I request in addition to the resumes and declarations of the various experts contained in the FSA, each staff member, each commission member and each consultant should certify that at any time they have worked on the project:

1. They owned no shares of NRG or its affiliates;
2. They never had, nor have, nor contemplate having any consulting relationship with NRG;
3. They have had no ex parte unrecorded contacts with NRG or any of its staff;
4. They have no economic relationship with NRG whatsoever.

Thank you for your consideration.

Very Truly Yours,


Daniel A. Bowman