

DOCKET

07-AFC-6

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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

**APPLICANT'S RESPONSE TO THE CENTER FOR BIOLOGICAL DIVERSITY'S
PETITION TO REOPEN THE ADMINISTRATIVE RECORD AND
REQUEST TO TAKE OFFICIAL NOTICE**

October 26, 2010

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I. INTRODUCTION

On October 11, 2010, over eight months after the close of the administrative record in this proceeding, the Center for Biological Diversity (“CBD”) filed its Petition to Reopen the Administrative Record and Request to Take Official Notice (“Petition”) through which CBD seeks to admit two reports titled “California’s Clean Energy Future: An Overview on Meeting California’s Energy and Environmental Goals in the Electrical Power Section in 2020 and Beyond” and “California’s Clean Energy Future: Implementation Plan” (collectively, the “Reports”). The Reports were co-authored by the Air Resources Board, the California Energy Commission (“Commission”), the California Public Utilities Commission, the California Environmental Protection Agency, and the California Independent System Operator (“CA-ISO”). Pursuant to Title 20, California Code of Regulations, section 1213, Applicant Carlsbad Energy Center LLC (“Applicant”) submits this Response to the Petition to point out that the Commission needs to close the evidentiary record with finality at some point, otherwise the Commission will invite a never-ending stream of petitions and requests. At this late juncture, the Commission

should only reopen the evidentiary record to admit evidence that is demonstrably relevant to the proceeding. While CBD failed to demonstrate that the Reports contain relevant information, Applicant wishes to point out that the Reports contain relevant information regarding California's need for new gas-fired generation resources to help integrate demand, resource adequacy and renewable integration.

II. CBD FAILS TO DESCRIBE THE RELEVANCE OF THE REPORTS

CBD correctly points out that “during a proceeding the Commission may take official notice of any generally accepted matter within the Commission's field of competence.” (20 Cal. Code. Reg. § 1213.) CBD fails, however, to make any attempt to prove that the contents of the Reports are “generally accepted matters.” Further, CBD fails to explain the relevance of the Reports. (*See* 20 Cal. Code. Reg. § 1212(a) (“Any relevant noncumulative evidence shall be admitted”).) The Reports total over 120 pages and include discussions of a wide range of topics. CBD fails to cite to specific portions of the Reports that discuss issues related to the proceeding. Rather, CBD relies on the unsupported statements that the Reports “contain the most up-to-date information relating to California's energy issues” and “constitute a material change of fact occurring since the conclusion of the evidentiary hearing.” (CBD's Petition at p. 1.) CBD fails, however, to describe which “facts” have changed and how they affect this proceeding.

The various state agencies that play a role in shaping California's complex energy policy constantly study, research and report on energy issues. If the Commission allows a party or intervenor to reopen the evidentiary record each time an agency issues a report that discusses energy issues, the Commission will never be able to close the evidentiary record with finality, and the Commission will invite endless requests similar to the Petition up until the day the Commission issues a decision.

If the Commission is inclined to admit the Reports, Applicant notes that the Reports contain relevant information concerning California's need to develop additional natural gas generation in order to satisfy demand and integrate new intermittent, renewable generation. The Reports state:

Natural gas generation resources will continue to be essential to meet California's demand for energy, and procurement and resource adequacy programs will deliver resources needed for system and local reliability requirements and system operational needs. The existing thermal fleet will be modified as needed to support renewable integration, with increased operational flexibility, ramping capability and regulation services; lower operating limits; and more frequent start/stop operation.

(California's Clean Energy Future: An Overview on Meeting California's Energy and Environmental Goals in the Electrical Power Section in 2020 and Beyond, at p. 5).

and

With the addition of increasing quantities of renewable resources, natural gas generation and storage must support local and system reliability while supporting integration of wind and solar resources.

(California's Clean Energy Future: Implementation Plan, at p. 10). This information contained in the Reports supports the testimony provided during the evidentiary hearings, especially the testimony of James McIntosh, the Director of Renewable Resource Integration and Grid Architecture, for the CA-ISO, who testified regarding the need for new gas-fired generation like the Carlsbad Energy Center Project ("CECP") to support the integration of new, intermittent renewable generation resources. (Trans. (02/03/10) at pp. 162-163.) Accordingly, the Reports contain information relevant to the proceeding that would justify their admission to the evidentiary record.

III. CONCLUSION

The Committee should close the evidentiary record with finality in order to avoid endless requests and petitions seeking to admit irrelevant information. At this juncture, only the most

relevant information should be admitted. If the Commission is inclined to admit the Reports, the Commission can do so based on the Report's description of the importance of new gas-fired generation like CECP.

Date: October 26, 2010

Stoel Rives LLP

A handwritten signature in black ink that reads "Brian J. Nese". The signature is written in a cursive style and is positioned above a horizontal line.

John A. McKinsey

Brian J. Nese

Attorneys for Applicant

CARLSBAD ENERGY CENTER LLC

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APPLICATION FOR CERTIFICATION
FOR THE CARLSBAD ENERGY
CENTER PROJECT

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 6/14/2010)

Carlsbad Energy Center LLC's
Applicant's Response To The Center For Biological Diversity's Petition To
Reopen The Administrative Record And
Request To Take Official Notice

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DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on October 26, 2010, I deposited copies of the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, 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.


Judith M. Warmuth