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STATE OF CALIFORNIA

Energy Resources Conservation and
Development Commission

In the Matter of:	)	
Application for Certification for the	)	
Carlsbad Energy Center Project	)	Docket No 07-AFC-6
(CECP)	)	
	)	

Combined City of Carlsbad and Carlsbad Redevelopment Agency
Reply Brief to CEC Staff's and Applicant's Response to Motion to Reopen Proceeding and Accept Testimony and Exhibits

April 7, 2011

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STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

In the Matter of Application for Certification for the Carlsbad Energy Center Project (CECP)	)))))	Docket No. 07-AFC-6

City of Carlsbad and Carlsbad Redevelopment Agency
Reply Brief to CEC Staff's and Applicant's Response to Motion to Reopen Proceeding and Accept Testimony and Exhibits based on Changed Circumstances

1. Introduction

Although the City of Carlsbad and the Carlsbad Redevelopment Agency (together "Intervenors") are hesitant to reply to responses made by the CEC staff and Applicant to the previous Motion for Reopening the CECP Proceeding those Intervenors believe those responses contain factual errors which the Committee must be aware of in order to make an informed and reasoned decision based on a factually correct record. This reply is intended to point out those errors and will leave testimony and argument to subsequent hearings, legal briefs, and/or comments.

2. Interstate 5 Widening Cumulative Impacts were not Thoroughly Considered

In their response, the CEC staff stated: "Staff does not oppose official notice of this agency document if such is legally appropriate. However, Staff sees no purpose in further hearings regarding the document. Staff's evidence on the 'cumulative effect' of the widening was considered exhaustively at the evidentiary hearings, and was based on information from Caltrans regarding the proposed alignment of the project. Staff is unaware of anything new in the document that is relevant to CECP that would warrant additional hearings." (CEC Staff Response, Page 3)

The City and Redevelopment Agency agree with the CEC Staff in taking official notice of the Caltrans Interstate 5 North Coast Corridor Project Draft Environmental Impact Report / Environmental Impact Statement published in June 2010. We do not concur with the conclusion, however, that the CEC Staff's evidence was consistent with the full range of analysis contained in this document.

In its Final Staff Assessment, written rebuttal testimony and oral testimony, the staff evaluated a number of configurations for widening on Interstate-5 in the vicinity of the project. These are:

- The 8+4 with Barrier configuration (FSA, Worker Safety and Fire Protection, Page 4.14-14; Hearing Transcript, February 4, 2010, Page 47, Line 19-23; Hearing Transcript, February 2, 2010, Page 251, Line 10 to Page 252, Line 1) – Since unspecified, it is assumed that the CEC staff here used the 45-degree slope in the pit as proposed by the applicant.
- The 8+4 widening configuration (Rebuttal Testimony, Exhibits VIS-1 and VIS-2) – Staff's evaluation here assumed a retaining wall inside the pit where the CECP is proposed to be located rather than a 45-degree slope.
- The 10+4 with Barrier Configuration (FSA, Worker Safety and Fire Protection, Page 4.14-14) – Staff only evaluated this configuration in conjunction with development of a retaining wall inside the pit rather than a 45-degree slope.
- Four alternative alignments "...each including two new elevated High Occupancy Vehicle (HOV) lanes near the center median between the Agua Hedionda Lagoon and Cannon Road on ramp/off ramp, directly east of the proposed CECP and SDG&E Cannon Substation." (FSA, Visual Resources, Page 4.12-26) – Since unspecified, it is again assumed that the CEC staff here used the 45-degree slope in the pit as proposed by the applicant.

In the Interstate 5 North Coast Corridor Project Draft Environmental Impact Report / Environmental Impact Statement, Caltrans evaluated four "build" alternatives (10+4 and 8+4 with barrier and 10+4 and 8+4 with buffer). Caltrans stated that the "...10+4 Buffer Alternative

was used for the Project Features Map, because the footprint width is an approximate average of the other proposed build alternatives." (Interstate 5 North Coast Corridor Project Draft Environmental Impact Report / Environmental Impact Statement, Pages. S-2 and 2.1) The 10+4 alternatives, in combination with a 45-degree slope in the pit as proposed by the applicant, were not evaluated by CEC staff in terms of cumulative impacts for either visual or worker safety and fire protection impacts.

3. The Staff did not consider the Impacts of the State Board's Once-Through Cooling Policy

In its motion, the City and Redevelopment Agency suggested reopening the record to consider the implications of the Once-Through Cooling Policy now adopted by the State Water Resources Control Board (hereinafter "State Board"). The City and Redevelopment Agency believe the Commission should be concerned about this policy particularly as it relates to the questions of the cumulative impacts associated with implementation of this policy, whether the CECP will comply with this policy, and the source of water for the CECP when the Encina Power Station is no longer operating. In response to the motion, the CEC Staff suggests taking official notice of the adopted Once-Through Cooling Policy but notes that: "The water use issue has been sufficiently covered in the evidentiary hearings, nothing in the Policy adds anything important to the existing record." (CEC Staff Response, Page 3)

Contrary to this statement, the policy is important because its implications and associated cumulative impacts were not addressed by the CEC water resources staff in the Final Staff Assessment or in the hearings because they considered the policy to be speculative. (Hearing Transcript, February 4, 2010, Page 228 Line 20 to Page 234 Line 14) During the hearings the CEC staff witness stated that the policy "...post-dates the analysis. That was not reasonably foreseeable at the time of the cumulative analysis." (Hearing Transcript, February 4, 2010, Page 230, Lines 6 to 8) The CEC Staff project manager stated that the closure of Encina Power Station Units 4 and 5 as discussed in the proposed policy and now required by the adopted policy "...was not in the analysis...in terms of the cumulative." (Hearing Transcript, February 4, 2010, Page 232, Lines 10 to 11) The CEC Staff counsel stated that the CEC Staff "...did not consider it to be a cumulative impact that would go into the cumulative impact analysis because when our

sections were prepared there was no proposed policy." (Hearing Transcript, February 4, 2010, Page 233, Lines 14 to 18)

The State Board adopted the final version of the Once-Through Cooling Policy in December 2010 which requires an owner or operator of an existing power plant to either achieve "a minimum 93 percent reduction in intake flow rate for each unit is required for Track 1..." or "...reduce impingement mortality and entrainment of marine life for the facility, on a unit-by-unit basis, to a comparable level to that which would be achieved under Track 1..." (State Water Resources Control Board, Statewide Water Quality Control Policy On The Use Of Coastal And Estuarine Waters For Power Plant Cooling, Section 2 A, Page 4) The compliance date for the Encina Power Station is December 31, 2017. (Section 3 E, Page 14) The policy also requires owners of OTC power plants to file implementation plans with the Board by April 1, 2011. (Section 3 A, Page 8) The implementation plan for Encina Power Station will assist parties and interested agencies in understanding NRG's current long-term plans for complying with the policy for each of the five units in the facility and help determine whether a water source for CECP will be available after 2017. The Applicant's response to the State Board on how it intends to comply with the adopted policy is essential for the Committee's recommendation to the Commission and should be made part of the record in this case.

4. <u>Applicant Failed to Consider Likely Conflict Between the Proposed Project and the Sewer Interceptor and Sewer Lines</u>

In its motion, the City and Redevelopment Agency also requested the Committee to explore the potential conflict between the CECP and the City's sewer interceptor and coastal rail trail projects and cited a letter from NRG noting that the CECP is incompatible with the sewer line and upgrade project. In its response, the Applicant stated that the City's comment attributed to NRG was "patently false." (Applicant Response, Page 5) Fortunately, it attached a copy of the letter that Intervenors believe should be incorporated into the record. Intervenors encourage the Committee to consider NRG's statements in the third paragraph on page three of the letter which states that the City's staff:

> "...was engaged in extensive engineering, design and environmental evaluation of a range of facilities it knew would have further significant, adverse impacts on NRG ownership and operation of the EPS and CECP."

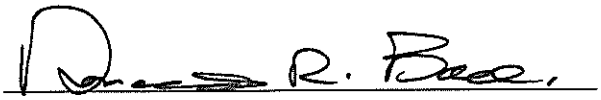
Intervenors are prepared to discuss the history, intent, timing, and final configuration of these projects with the Committee as well as Intervenor's efforts to communicate with NRG on these critical issues.

5. Subsequent Events have Highlighted the Importance of Worker Safety and Fire Protection

In its motion, the City and Redevelopment Agency requested opening the record to discuss recent fire events at power plants, particularly the Palomar Energy Center. The CEC staff recommended taking official notice of any resulting fire reports but stated, "Additional hearings would add little to the already elaborate hearing record." During the hearings, the CEC staff used the Palomar Energy Center as the "best example" of a restricted access power plant site." (Hearing Transcript, February 4, 2010, Page 41, Lines 11 to 15) and a demonstration that the fire protection recommendations made by the Carlsbad Fire Department were unusual and excessive. An examination of the Palomar fire would help the Committee understand the similarities and differences between the CECP and Palomar sites and what may happen at the CECP with a similar event. Intervenors believe the experience with the Palomar fire supports the Carlsbad Fire Chief's requirement for a 50-foot lower and a 25-foot upper perimeter road.

Thank you for considering these comments.

Respectfully submitted:



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APPLICATION FOR CERTIFICATION FOR THE *CARLSBAD ENERGY CENTER PROJECT*

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 1/24/2011)

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DECLARATION OF SERVICE

I, R. Nuschy, declare that on 4.7, 2011, I served and filed copies of the attached Reply Brief, dated 4.7, 2011. The original document filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[http://www.energy.ca.gov/sitingcases/carlsbad/index.html]**.

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

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X sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

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Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

R Nuschy

*indicates change