



500 Capitol Mall, Suite 1600
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

JOHN A. MCKINSEY
Direct (916) 319-4746
jamckinsey@stoel.com

April 12, 2011

VIA HAND DELIVERY AND EMAIL

The Honorable James D. Boyd
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Hearing Officer Paul Kramer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: Carlsbad Energy Center Project (07-AFC-6)
Letter in Response to City of Carlsbad's Reply Brief to CEC Staff's and
Applicant's Response to City's Motion to Reopen Proceeding and Accept
Testimony and Exhibits**

DOCKET	
07-AFC-6	
DATE	Apr 12 2011
RECD.	Apr 12 2011

Dear Commissioner Boyd and Hearing Officer Kramer:

On April 7, 2011, Intervenor City of Carlsbad and the Carlsbad Redevelopment Agency (collectively, the "City") filed a Combined Reply Brief to CEC Staff's and Applicant's Response to the City's Motion to Reopen Proceeding and Accept Testimony and Exhibits (the "City's Reply"). Carlsbad Energy Center LLC ("Applicant") submits this letter in response to the City's Reply to correct misinformation contained therein and to make very clear that the Committee has received robust, complete and adequate evidence regarding Caltrans' Interstate 5 North Coast Corridor Project (the "I-5 Widening Project") to enable correct assessment of the potential cumulative effects of that project and the Carlsbad Energy Center Project ("CECP").

Applicant concurs with Staff's finding that the evidence presented to the Committee at the Evidentiary Hearings for CECP was consistent with the full range of analyses contained in the Caltrans I-5 Widening Project Draft Report/Environmental Impact Statement published in June 2010 ("DEIR"). Contrary to the City's assertions, Staff and Applicant thoroughly and



The Honorable James D. Boyd
Hearing Officer Paul Kramer
April 12, 2011
Page 2

exhaustively considered and presented evidence on the cumulative effects of CECP and Caltrans' I-5 Widening Project.

The City contends that Staff failed to consider the 10 + 4 alternatives in conjunction “with the 45 degree slope in the pit as proposed by applicant . . . in terms of cumulative impacts for either visual or worker safety and fire protection impacts.” (City Reply at p. 4.) What the City fails to acknowledge is that Staff evaluated the two alternative scenarios where the I-5 Widening Project would come closest to CECP – essentially, the “worst case scenarios.” (FSA at 4.14-14; Evidentiary Hearing Testimony at pp. 250, 251 (Feb. 2, 2010).) Prior to release of the DEIR, Caltrans indicated to Staff and Applicant that the 8 + 4 with barrier alignment was a preferred alignment, which is the alternative alignment that encroaches the most upon the CECP site. (*Id.*) Moreover, Staff and Applicant repeatedly consulted with Caltrans and the alternative alignments are already part of the CECP record. (*See* Data Responses DR-67a-1, DR 105-1 through 4; FSA at p. 4.12-26.) The FSA also notes that if the 10 + 4 with barrier configuration is chosen, CECP would still have sufficient space for visual-blocking vegetation and, regardless of which alternative alignment is chosen, there would still be ample space for “a perimeter fire access road at the bottom of the bowl where the power plant will be located.” (FSA at p. 4.14-15.)

It is important to note that the future I-5 Widening Project remains somewhat unknown and Staff evaluated what is known at this point to the best of its ability and in conformance with the Warren-Alquist Act. The published DEIR does not indicate a preferred alignment; Caltrans will identify such preferred alignment only after it has received and reviewed public comments on the DEIR and any other necessary environmental and/or engineering studies are completed. (DEIR at p. i.)

The bottom line is that Staff evaluated the worst case scenario- the 8+4 plus barrier alternative, involving a retaining wall instead of the 45 degree slope in the “bowl,” and concluded that the widening of I-5 under the “worst case scenario” alignment would not adversely impact safety or emergency response at CECP, nor would it impede adequate visual screening. (FSA at p. 4.14-15.) The alleged missing analysis requested by the City is yet another attempt to unnecessarily delay the CECP AFC proceedings.



The Honorable James D. Boyd
Hearing Officer Paul Kramer
April 12, 2011
Page 3

In the City's Reply, the City makes the same or similar arguments it has repeated in various forms for several years. The City continues to try to find ways to distract the Committee and delay the project. Applicant respectfully urges the Committee to see through the City's efforts and act according to the law and the evidence presented to it.

Respectfully submitted,


John A. McKinsey

JAM:jmw

cc: *See also* enclosed 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 1/24/2011)

Carlsbad Energy Center LLC
Letter in Response to City of Carlsbad's Reply Brief to CEC Staff's
and Applicant's Response to City's Motion to Reopen
Proceeding and Accept Testimony and Exhibits

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
doCKET@energy.state.ca.us

APPLICANT

Jennifer Hein
George Piantka, P.E.
NRG Energy, West
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
jennifer.hein@nrgenergy.com
george.piantka@nrgenergy.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
500 Capitol Mall, Ste. 1600
Sacramento, CA 95814
jamckinsey@stoel.com

INTERESTED AGENCIES

California ISO
(e-mail preferred) e-recipient@caiso.com

INTERVENORS

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

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;
ron.ball@carlsbad.ca.gov

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
mdjoseph@adamsbroadwell.com

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 92013
powerofvision@roadrunner.com

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

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

ANTHONY EGGERT
Commissioner and Associate Member
aeggert@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

Lorraine White
Adviser to Commissioner Eggert
lwhite@energy.state.ca.us

Jennifer Jennings
Public Adviser's Office
publicadviser@energy.state.ca.us

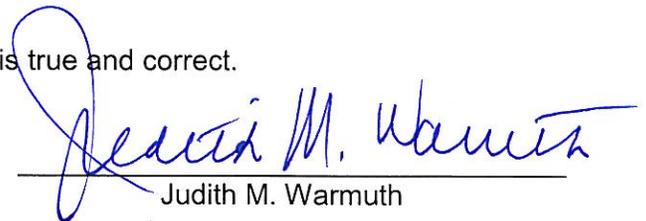
DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on April 12, 2011, 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