STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

DOCKET
07-AFC-6
DATE AUG 22 2011
RECD. AUG 22 2011

In the Matter of:

The Application for Certification for the CARLSBAD ENERGY CENTER PROJECT

Docket No. 07-AFC-6

CARLSBAD ENERGY CENTER LLC'S MOTION TO JOIN CENTER FOR BIOLOGICAL DIVERSITY'S REQUEST TO DELAY THE SEPTEMBER 19, 2011 EVIDENTIARY HEARING

August 22, 2011

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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**

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I. INTRODUCTION

On July 21, 2011, the Center for Biological Diversity ("CBD") filed its Response to Staff's Status Report #11 and City of Carlsbad's Related Letter ("Response"). In light of the United States Environmental Protection Agency, Region IX's ("EPA") July 18, 2011 withdrawal of its Prevention of Significant Deterioration ("PSD") applicability determination for the Carlsbad Energy Center Project ("CECP") and the possible need for the San Diego Air Pollution Control District ("SDAPCD") to revisit and revise its Final Determination of Compliance ("FDOC") for CECP, CBD included in the Response a request for the CECP Siting Committee ("Committee") to delay the CECP evidentiary hearing beyond September 2011 ("CBD Request"). On August 10, 2011, the Committee issued a Revised Committee Scheduling Order that set forth a September 19, 2011 evidentiary hearing date and related deadlines for the filing of testimony and evidence by the parties.

Applicant Carlsbad Energy Center LLC ("Applicant") herein joins the CBD Request to delay the evidentiary hearing for the reasons specified below.

II. ARGUMENT

The Energy Commission regulations on power plant site certification provide that "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs." (20 Cal. Code Regs. § 1212(a).) On July 18, 2011, the EPA withdrew its PSD applicability determination for CECP, and shortly thereafter CBD filed a request to delay the September 2011 evidentiary hearing. In 2010, EPA determined that CECP is not a major modification under the PSD regulations and therefore is not subject to PSD permit requirements. EPA's PSD Applicability Analysis noted that its determination of PSD applicability was based on a conservative estimate of June 30, 2011 for the start of actual construction. Based on the fact that CECP did not start construction by June 30, 2011, EPA's new greenhouse gas PSD regulations are now applicable to CECP, and EPA will need to issue a new PSD applicability determination for greenhouse gas. In the August 10, 2011 Revised Committee Scheduling Order, the Committee acknowledged EPA's withdrawal and asked the parties to discuss in their filings whether delays are necessary.

As CBD correctly points out, it would be premature to hold further evidentiary hearings in September 2011 because the Presiding Member cannot issue a [Revised] Presiding Member's Proposed Decision ("RPMPD") until a full analysis of compliance with air quality laws is made. (20 Cal. Code Regs. § 1752.3(a).) Specifically, the RPMPD "shall include findings and conclusions on conformity with all applicable air quality laws." (*Id.*) In light of EPA's July 18, 2011 correspondence, it is impossible to include a full analysis of CECP's compliance with federal PSD regulations until EPA has issued a new PSD applicability determination.

Applicant herein respectfully requests a postponement of the CECP licensing process, including the requirements of the August 10, 2011 Revised Committee Scheduling Order, until

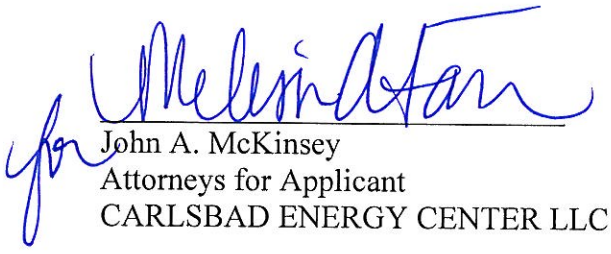
Applicant can work with EPA on a new PSD applicability determination for CECP, in line with the EPA's July 18, 2011 correspondence. By submitting this Motion, Applicant seeks to postpone the CECP licensing process until such time that the Committee will be able to incorporate accurate findings and conclusions regarding CECP's conformity with applicable federal PSD regulations based on evidence in the record for this proceeding. Applicant does not, however, seek to postpone the CEC licensing process and the requirements of the August 10, 2011 Revised Committee Scheduling Order until a PSD permit is issued by EPA.

III. CONCLUSION

Applicant respectfully requests that the CECP licensing process be postponed as set forth herein. Applicant reiterates that it is not seeking to postpone the licensing process until a PSD permit is issued; rather, Applicant seeks to postpone the process until a new greenhouse gas PSD applicability determination is completed.

Date: August 22, 2011

Stoel Rives LLP



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APPLICATION FOR CERTIFICATION
FOR THE CARLSBAD ENERGY
CENTER PROJECT

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 8/17/2011)

Carlsbad Energy Center LLC's Motion to Join Center for Biological Diversity's Request to Delay the September 19, 2011 Evidentiary Hearing

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DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on August 22, 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.

AND/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