

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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|-----------------|-------------|
| DOCKET | |
| 07-AFC-6 | |
| DATE | DEC 08 2011 |
| RECD. | DEC 08 2011 |

Terramar Rebuttal for the December 12, 2011 Hearing
December 8, 2011

ADDITIONAL REBUTTAL TESTIMONY

The impact of the three new PPA projects on our cumulative impacts and alternatives analysis

In its testimony, Intervener Terramar has already rebutted the Applicant's contention that the 3 PPA's are speculative. It is also important to note in rebuttal that the Applicant is also legal counsel for the Pio Pico project injecting a concern regarding conflict of interest.

Conditions Land-2 and Land-3, their environmental impacts and appropriate modifications to address the financial concerns raised by the Applicant

In their testimony, the Applicant surreptitiously added the word "enhancement" to their proposed conditions Land-2 and Land-3, calling them "Land Use Enhancement Conditions". In fact, in their November 18, supplemental testimony page 3, they stated,

In fact, Applicant's position is that the Land Use Enhancement Conditions were presented solely as enhancements to the Project.

This flies directly in the face of what John McKinsey, attorney for the applicant, told the Carlsbad Committee on May 20, 2011,

But I think our goal is to try to -- to -- to find a positive way to provide the committee what they seek in terms of extraordinary public purpose benefit that goes along the lines of -- of what both the city and other parties have desired.

COMMITTEE CONFERENCE AND EVIDENTIARY HEARING
BEFORE THE CALIFORNIA ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION p. 3

Grid reliability issues raised by the comments from CAISO during the June 30, 2011, Energy Commission Business Meeting;

Included in earlier submitted testimony and rebuttal testimony.

The federal PSD permit that the project will require in order to operate.

On page 13 of the Applicant's Supplemental Testimony, Nov. 18, 2011, it states:

Consequently, construction could begin as early as 2012.

As we all know construction cannot begin until PSD has been decided and if necessary a permit has been issued. Yet, on page 17 of the supplemental testimony, the applicant states an entirely different timeline for construction to begin:

The Applicant expects that the preparation of a PSD Permit Application would take approximately 3 to 4 months to complete. Once the PSD permit application is submitted to EPA Region 9, the Applicant expects EPA to take at least 12 months to issue the draft PSD permit for the Proposed Project. Depending on the comments received by EPA on the draft PSD permit, it could take the EPA an additional 6 months to respond to comments and issue the final PSD permit. Following the issuance of the final PSD permit by EPA, there is a 30-day appeals period. If an appeal is filed on the final PSD permit for the Project, it could take the EPA Environmental Appeals Board from 6 to 12 months to rule on the appeal.

Per Exhibit 395, emails from Shaheerah Kelly of the EPA, it shows that the applicant has not even contacted EPA regarding PSD since they lost their determination in June. Based on the applicant's own timeline, how can the applicant possibly begin construction by 2012 based on their own testimony from page 17?

Therefore right now it is impossible for the applicant to estimate the CECP's contemporaneous period for PSD until the applicant has some meaningful communication with the EPA. Any modeling that the applicant has done is meaningless including the Palmdale Project PSD exhibits.

Recent City land use LORS amendments contained in Resolution 2011-230 and Ordinance CS-158

Terramar is glad to see that the applicant finally realizes that the CECP violates local LORS.

Additional evidence, not previously presented, regarding whether it is appropriate to override either unmitigated environmental impacts or noncompliance with state or local LORS.

Please accept Exhibit 396, email from Michelle Mata of the San Diego Regional Water Quality Control Board stating that nothing has happened on the CECP permit. This evidence as well as that from Shaheerah Kelly of the EPA show that the applicant has not

been performing the due diligence that would be expected of an applicant intending to go forward with a project.

The fact that SDG&E rejected CECP followed by the applicant's inaction on other permits concerns Terramar. Why is the applicant dragging this project along when without a PPA the project will never be built (per their own words)? Terramar suggests that the applicant quit wasting state resources for a project that will not be built.

Exhibit List

396 Email communication from Michelle Mata, San Diego Regional Water Quality Control Board

Exhibit 396

From: Michelle Mata (mmata@waterboards.ca.gov)
To: siekmann1@att.net;
Date: Tue, December 6, 2011 9:24:43 AM
Cc:
Subject: Re: OTC at Encina and the proposed CECP

NPDES permits are renewed every 5 years.

Michelle

>>> Kerry Siekmann <siekmann1@att.net> 12/5/2011 7:16 PM >>>
Thank you Michelle. When you renew the Encina permit, when will it expire?
Kerry Siekmann

From: Michelle Mata <mmata@waterboards.ca.gov>
To: Kerry Siekmann <siekmann1@att.net>
Sent: Mon, December 5, 2011 3:59:55 PM
Subject: Re: OTC at Encina and the proposed CECP

Kerry,

There have been no changes since the last time we spoke. We are currently not working on a draft for the CECP.

The Encina Power Plant permit expired on October 1, 2011. The State Water Resources Control Board (State Board) received a complete application for permit renewal (dated March 30, 2011) and therefore the permit has been administratively extended. The State Board will be renewing the permit for Encina.

Please let me know if you have any additional questions.

Michelle Mata
Water Resource Control Engineer
San Diego Regional Water Quality Control Board
Phone: (858) 467-2981
Fax (858) 571-6972

Please take the time to fill out our electronic customer service survey located at <http://www.calepa.ca.gov/Customer/>,

>>> Kerry Siekmann <siekmann1@att.net> 12/2/2011 4:30 PM >>>

Michelle

We have a hearing in Carlsbad on the CECP on Dec. 12, 2011. Could you update me on the CECP permit? And also could you let me know when the Encina permit expires?

Thank you,
Kerry Siekmann



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
FOR THE CARLSBAD ENERGY
CENTER PROJECT

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 11/29/2011)

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DECLARATION OF SERVICE

Kerry
I, Sieckmann, declare that on, 12-8-2011, I served and filed copies of the attached Additional Supplemental Testimony Exhibit 396 dated 12/8/2011.
The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/sitingcases/carlsbad/index.html].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked "hard copy required."

AND

For filing with the Docket Unit at the Energy Commission:

- by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

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

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California 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.

Kerry Sieckmann