



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

June 3, 2011

JOHN A. MCKINSEY
(916) 447-0700
jamckinsey@stoel.com

VIA EMAIL AND HAND DELIVERY

The Honorable James D. Boyd
Hearing Officer Paul Kramer
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
07-AFC-6	
DATE	JUN 03 2011
RECD.	JUN 03 2011

**Re: Carlsbad Energy Center Project (07-AFC-6)
Proposed Conditions of Certification Related to the Shutdown of Units 4 and 5 at
the Encina Generating Station**

Dear Commissioner Boyd and Hearing Officer Kramer:

During the May 19 and 20, 2011 Committee Conference and Evidentiary Hearing (“Hearing”), the Committee requested Applicant Carlsbad Energy Center LLC and intervenors, the City of Carlsbad and the Carlsbad Redevelopment Agency (collectively, the “City”), to attempt to resolve certain outstanding issues related to the permitting of the Carlsbad Energy Center Project (“CECP”). Specifically, the Committee requested the parties propose, either jointly or separately, a condition of certification related to the future, permanent shutdown of the Encina Generating Station’s Units 4 and 5.

After consulting with City Staff, Applicant believes it has found Land Use condition language regarding the retirement and removal of Units 4 and 5 that the City will support. The following language for conditions of certification LAND-2 and LAND-3 was agreed to by both the City and the Applicant. Each party believes these particular conditions of certification achieve the directive of the Committee to propose a condition or conditions that lead to the eventual permanent shutdown of Units 4 and 5, while also ensuring the parameters of the conditions envelop each party’s specific concerns and requirements.

Proposed Conditions of Certification, LAND-2 and LAND-3

LAND-2 On or before January 1, 2016, the project owner shall prepare and submit a Demolition, Removal, and Remediation Plan (DRRP) to the CPM, the City of Carlsbad, and the Carlsbad Redevelopment Agency. The DRRP shall propose the process, schedule, and legal requirements for the



The Honorable James D. Boyd
June 3, 2011
Page 2

demolition, removal, and remediation of the Encina Power Station (Units 1 through 5), associated structures, the black start unit and the exhaust stack. As part of completion of the DRRP, project owner shall consult with the California Energy Commission, the California Coastal Commission, the City of Carlsbad, the Carlsbad Redevelopment Agency, the San Diego Regional Water Quality Control Board, the San Diego Air Pollution Control Board, and the California Independent System Operator to ensure the DRRP best reflects the procedural and substantive requirements that will apply to the site.

On or before January 1, 2017, project owner shall prepare and submit to the CPM, the City of Carlsbad, and the Carlsbad Redevelopment Agency, a study of the estimated costs associated with implementing the DRRP.

Project owner shall demonstrate, to the CPM's satisfaction, fiscal capability to implement the DRRP prior to commencement of demolition activities. Such demonstration could be accomplished by submittal of a financial plan, deposit of funds into a dedicated account, or any combination thereof.

Concurrent with submittal of the DRRP, or by a date mutually agreed to by project owner and the Carlsbad Redevelopment Agency, project owner shall initiate the process with the Carlsbad Redevelopment Agency for redeveloping the existing Encina Power Station area of the project by submitting a redevelopment application.

Verification: On or before January 1, 2016, project owner shall provide the DRRP to the CPM for review and approval and to the City of Carlsbad, the Carlsbad Redevelopment Agency, and the California Coastal Commission for review and comment. The City of Carlsbad and the Carlsbad Redevelopment Agency shall provide comments on the DRRP to the CPM and project owner within 60 days or a date mutually agreeable to project owner and the City of Carlsbad and the Carlsbad Redevelopment Agency.

On or before January 1, 2016, project owner shall submit to the CPM evidence that the redevelopment process with the Carlsbad Redevelopment Agency for redeveloping the Encina Power Station site has begun or shall submit to the CPM evidence of a later



The Honorable James D. Boyd
June 3, 2011
Page 3

mutually agreed upon date by project owner and the Carlsbad Redevelopment Agency to begin the redevelopment process.

On or before January 1, 2017, project owner shall submit the results of the study on estimated costs of implementing the DRRP to CPM for review and approval and to the City of Carlsbad and the Carlsbad Redevelopment Agency for review and comment. The City of Carlsbad and the Carlsbad Redevelopment Agency shall provide comments on cost estimate to the CPM and project owner within 60 days or a date mutually agreeable to the project owner and the City of Carlsbad and the Carlsbad Redevelopment Agency.

LAND-3 On or before July 1, 2016, project owner shall submit applications for required permits and approvals for demolition, removal, and remediation of the Encina Power Station (Units 1 through 5), associated structures, the black start unit and the exhaust stack.

Upon the commencement of commissioning activities of the project, project owner shall request permission from the California Public Utilities Commission (CPUC) to permanently shutdown Units 1 through 5 at the Encina Power Station and the black start unit.

Within six months following the shutdown of Units 1 through 5 at Encina Power Station and the black start unit pursuant to the above CPUC approval, and in compliance with all permits and approvals necessary to perform such activities, project owner shall commence demolition, removal, and remediation of the Encina Power Station (Units 1 through 5), all associated structures, the black start unit and the exhaust stack

Verification: Project owner shall provide evidence to the CPM, not later than September 1, 2016, of the submittal of permit and approval applications to required agencies for the demolition, removal and remediation.

Within six months following approval by the CPUC, project owner shall demonstrate to the satisfaction of the CPM that it has shut down Units 1 through 5 of Encina Power Station and the black start unit, and commenced the demolition, removal, and remediation. Concurrent with such demonstration, project owner shall also demonstrate



The Honorable James D. Boyd

June 3, 2011

Page 4

compliance with any fiscal capability funding requirements related to the CPM's approval of the financial plan for demolition, removal and remediation in LAND-2.

Within 36 months of the start of demolition, removal, and remediation, the project owner or its parent company shall demonstrate to the satisfaction of CPM that demolition and removal of the Encina Power Station Units 1 through 5, all associated structures, the black start unit and the exhaust stack and remediation of the site is complete.

In conclusion, Applicant believes the proposed conditions LAND-2 and LAND-3 will help to facilitate final resolution regarding the future of Units 4 and 5. Moreover, these conditions will ensure a promise by the Applicant to continue its desire to work closely with the City to redevelop the area west of the tracks in a manner consistent with the City's and its constituents' vision for such future development.

Applicant respectfully requests that the Committee move forward and present an errata to the Presiding Member's Proposed Decision ("PMPD") that includes the proposed conditions LAND-2 and LAND-3 and present the PMPD to the full Commission for final approval at the June 15, 2011 Commission Business Meeting.

Respectfully submitted,


for John A. McKinsey

JAM:jmw

Enclosure

cc: Proof of Service List

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 5/18/2011)

Carlsbad Energy Center LLC
Applicant's Proposed Conditions of Certification Related to the Shutdown
of Units 4 and 5 at the Encina Generating Station

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

Tim Olson
Adviser to Vice Chair Boyd
tolson@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

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

DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on June 3, 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