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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO: 07-AFC-6
CARLSBAD ENERGY CENTER PROJECT	)	CENTER FOR BIOLOGICAL DIVERSITY'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION

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INTRODUCTION

The Commission should reject the Presiding Member's Proposed Decision ("PMPD") in the Carlsbad Energy Center Project proceeding and require a new environmental analysis that conforms with the California Environmental Quality Act, Public Resources Code Section 21000, *et seq*. ("CEQA"). Therefore, the Center for Biological Diversity (the "Center") urges the Commission to deny approval of the Project. Alternatively, the Center urges the Commission to substantially revise the PMPD, correcting its factual and legal deficiencies.[1]

Fundamentally, CEQA requires an agency to inform its decisionmakers and the public about the environmental impacts of its decision. Unfortunately, the PMPD ignores CEQA by adopting a systems theory where all new combined cycle plants with similar characteristics to the Project would need not undergo CEQA analysis for the emissions of greenhouse gases. In contrast, faithful compliance with CEQA ensures that a specific project's environmental impacts are thoroughly analyzed. The PMPD's use of general criteria to analyze the general type of plant being permitted fails in this regard and is inconsistent with the Commission's "Committee Guidance on Fulfilling California Environmental Quality Act Responsibilities for Greenhouse Gas Impacts in Power Plant Siting Applications" ("Committee Guidance")[2] conclusion that "[a]t least for the immediate future, the Committee believes the prudent course is to address the significance of GHG as a cumulative impact on a case by case basis, and any mitigation likewise." (Committee Guidance at 28.)

Rather than recognizing that the Project's potential new emissions of 846,000 tons CO_2-equivalent emissions[3] is a significant impact, the PMPD contends, with no irony, that building this

[1] The Center focuses on a narrow set of legal and factual issues. Other fatal flaws in the PMPD are addressed by other Intervenors.

[2] CEC-700-2009-004 (March 2009).

[3] Mass emissions of GHGs are converted into carbon dioxide equivalent (CO_2E) emissions to convey global warming potential – a relative measure, compared to CO_2, of a compound's residence time in the atmosphere and ability to warm the planet. (Exh. 222 at 4.1-107.)

new source of greenhouse gases will have no effect on the environment and might actually improve it. The PMPD reaches this erroneous conclusion with a deficient cumulative impacts analysis, generalized and legally inadequate standards for analyzing the emissions of greenhouses gases, and an erroneous interpretation of the CEQA baseline and a failure to quantify that baseline. The PMPD fails to identify or specifically account for the reductions in other greenhouse gas emissions that will supposedly occur as a result of the Project.

Moreover, the PMPD makes factual errors that undermine the greenhouse gas and alternatives analysis. These factual errors are due in part to the passage of time and the changing circumstances in the California electric system. At the hearings in February 2010, Mr. Jim McIntosh, the representative of the California Independent System Operator, agreed with the Center's expert Tam Hunt that more information was needed to determine how the Carlsbad Energy Center Project ("CECP" or "Project") fits into the evolving electric system. (2/3/10 Reporter's Transcript ("RT") at 218:5-24.) Indeed, the slow pace of this proceeding has allowed the ISO to conduct new studies and other important information has also come to light in the intervening year and a half. New information shows that CECP is not necessary to shut down the South Bay and Encina Power Plants, for local reliability, nor to integrate renewables.

Concurrently with these comments, in a separate document the Center is supporting the City of Carlsbad and Carlsbad Redevelopment Agency Motion to Take Official Notice ("Carlsbad Motion") and moving to request Official Notice and to reopen the evidentiary record for other documents not included in the Carlsbad Motion. (See Center for Biological Diversity's Response in Support of City of Carlsbad's Motion to Take Official Notice and Motion to Take Official Notice and Reopen the Evidentiary Record ("Center Response and Motion").) Even if the Commission does not grant the Center's request, due process and CEQA requires the consideration of these facts to correct factual inaccuracies when the Commission makes its decision on the PMPD. (See Cal.

Code of Regs., tit. 20 § 1754(b) (the commission shall consider additional evidence at the hearing if "due process requires"); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1119-20 (an agency must consider information presented to it at the hearing on the project even after the comment period for the draft Environmental Impact Report); see also Cal. Code of Regs., tit. 14 section 15121(a)[4] ("the public agency shall consider the information in the EIR along with other information which may be presented to the agency").)

The submitted documents address the following factual errors:

- The PMPD incorrectly states that "[i]n the San Diego area, the CAISO has 'reliability must run' contracts with several old, less-efficient plants in part to provide ancillary services." (PMPD GHG at 12.) There are no RMR contracts in place in San Diego at this time. The RMR contract on the Encina plant was released December 31, 2007 and the last remaining RMR contract on the South Bay plant was released as of December 31, 2010;

- Citing outdated local capacity information, the PMPD states that the "capacity provided by CECP will allow for the retirement of the Encina units (1-3) and (with the Sunrise Powerlink) South Bay; it should also reduce operation of Encina Units 4-5 and facilitate their future retirement." (PMPD GHG at 14). This is also incorrect. South Bay has already been retired without CECP, and a recent SDG&E filing with the CPUC explains that with other proposed new generation that does not include CECP, there will be enough capacity available to meet the reliability needs of the San Diego region and fully retire the Encina plant;

- The PMPD concludes that "power plants with the operational flexibility of and offering the ancillary services provided by the CECP are needed by California to meet its renewable energy policy goals." (PMPD GHG at 16.) This argument is inconsistent with a California ISO study that found that the flexibility of the existing fleet is sufficient for integrating 20 percent renewables and recent CAISO modeling that shows that new plants are not necessary to integrate the 33 percent renewables into the system.

- The PMPD states that "whether LNG will ever be available in Carlsbad and used in CECP, and the extent to which GHG emission rates will change, is speculative." (PMPD GHG at 15.) This is contrary to current LNG use. LNG is already being used in the greater San Diego region, and its use will very likely increase substantially in the near future; and

- The PMPD states that "the cost of energy from rooftop PV is currently not on a par with that from the CECP." (PMPD Alternatives at 15.) This is inaccurate. In fact, Southern California Edison recently contracted for 250MW of rooftop solar PV for below the market price referent.

(See *infra* Sec. I.C. for discussion of these factual issues.)

[4] Hereinafter, all references to Cal. Code of Regs., tit. 14 secs. 15000 *et seq*. is "CEQA Guidelines."

STANDARD OF REVIEW

The Commission is required to comply with CEQA's substantive and procedural mandates. (Pub. Res. Code §§ 21000, 21002; *Mountain Lion Found. v. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 134; *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; *Joy Road Area Forest and Watershed Ass'n v.Cal. Dep't. of Forestry & Fire Prot.* (2006) 142 Cal.App.4th 656, 667-68.) At its most fundamental level, CEQA compels a "meticulous process" (*Planning & Conservation League v. Dep't. of Water Res.* (2000) 83 Cal.App.4th 892, 911) for providing "public agencies and the general public with detailed information about the effects of a proposed project on the environment." (*San Franciscans for Reasonable Growth v. City & Cnty. of S.F.* (1984) 151 Cal.App.3d 61, 72.) The EIR, like the functional equivalent document, is "intended . . . 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action,'" serving as an accountability document that "protects . . . the environment" and "informed self-government." (*Id*.; *Sierra Club v. State Bd. Of Forestry,* 7 Cal. 4th at 1229 [citing *Laurel Heights Improvement Ass'n of S.F. v. Regents of the Univ. of Cal.* [*"Laurel Heights"*] (1988) 47 Cal.3d 376, 392].)

I. The Environmental Analysis of Greenhouse Gases Fails to Comply with CEQA.

A. The PMPD Does Not Properly Analyze the Project's Greenhouse Gas Emissions.

The PMPD's finding that the Project's emissions of greenhouse gases will not be a significant impact is contrary to CEQA. CEQA Guidelines section 15064.4(b)(1) requires an agency to consider "[t]he extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting" as a factor in determining the significance of the greenhouse gas emissions from a Project. The Governor's Office of Planning and Research ("OPR") issued a Technical Advisory articulating the method for analyzing greenhouse gases; it called for lead agencies to first "make a good-faith effort, based on available information, to

calculate, model, or estimate the amount of CO_2 and other GHG emissions from a project" and then determine whether these emissions "constitute[] a significant impact." (OPR, Technical Advisory, *CEQA & Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review* (June 17, 2008) at 5-6, Exh. 626.) The Final Statement of Reasons[5] ("FSR") for section 15064.4(b) explains that the PMPD must "fully account[] for all project emissions." (FSR at 24.) A determination that the Project's greenhouse gas emissions result in a reduction must be supported by substantial evidence. (*Id.*)

1. The PMPD Fails to Provide a Proper Basis for Its Analysis.

The PMPD's justification for not showing the amount of net reduction is unavailing. The PMPD claims that is impossible to "specifically quantify[] the GHG emission reductions" resulting from the CECP. (PMPD GHG at 15.) To cutoff the required analysis, the PMPD argues that "given the number of variables involved in dispatching decisions we would not expect precision in [quantifying the GHG reductions]. The impossibility of calculating exact system operations in to the future does not require the Energy Commission to ignore the compelling evidence presented by staff that the integration of CECP into to [sic] electricity system will result in a net decrease in system GHG emissions." (*Id.*) However, this statement of impossibility is contrary to another official statement of the Energy Commission. A report authored by the Commission and other state agencies confirms that the Commission does have methods for determining greenhouse gas reductions from the system. "California's Clean Energy Future: Implementation Plan" (dated September 2010) states that "[i]n support of tracking progress towards AB 32 goals, the Energy Commission . . . intends to estimate GHG emissions resulting from the power system using analytic methods to

[5] (Californian Natural Resources Agency, "Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97" ["FSR"] (Dec. 2009) [FSR explains the purpose and meaning of the changes to the CEQA Guidelines].)

convert resource planning assumptions into GHG emissions."[6] This is the type of analysis the PMPD could have used to determine the greenhouse gases emissions impact of the CECP. Thus, the Commission failed in its duty under CEQA to "use its best efforts to find out and disclose all that it reasonably can." (PMPD GHG at 15 (citing Cal. Code Regs., tit. 14 § 15144).) Moreover, the PMPD's finding that "the Staff disclosed all relevant information about the project's potential GHG emission impacts, and that its conclusion does not fail due to the impossibility of specifically quantifying the GHG emission reductions identified" (PMPD GHG at 15) is contrary to the Commission's stated ability to model GHG emissions in its own report.[7] (See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App. 4th 1344, 1367 ["[w]here comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not be simply ignored. *There must be good faith, reasoned analysis in response*"] [original emphasis, citations omitted].)

Additionally, the PMPD's claim that the Project will reduce GHG emissions misleads the decisionmakers and the public, because this conclusion is based on fundamental assumptions that are not identified, explained, or supported by any evidence. Substantial evidence "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial

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[6] (Cal. Air Resources Board, California Public Utilities Commission, California Energy Commission, California Independent Service Operator and Governor of the State of California, "California's Clean Energy Future: Implementation Plan" (September 2010) at 68, <http://www.cacleanenergyfuture.org/common/CCEF%20Implementation%20Plan_vFinal_2a.pdf> as of June 8, 2011.)

[7] The Center recognizes that "California's Clean Energy Future: Implementation Plan" is not part of the evidentiary record. At the May 20, 2011 hearing, the Committee denied the Center's October 11, 2010 Petition to Reopen the Administrative Record and Request To Take Official Notice of that document. (5/20/11 RT:51:8-21). The Center respectfully urges that due process requires the Commission to consider its own statements in an official publication of the Commission. (See Cal. Code of Regs., tit. 20 § 1754(b) (the commission shall consider additional evidence at the hearing if "due process requires").) In addition, a factual error in the decision creates a sufficient reason to consider this information. (*See* Cal. Code of Regs., tit. 20 § 1720 (A petition for reconsideration can

evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (Pub. Resources Code, § 21080(e)(1)-(2).)

Without "showing its math" regarding the purported greenhouse gas reductions, the PMPD concludes that the Project will result in a net reduction of greenhouse gases. (PMPD GHG at 11-15.) Yet, the PMPD claims that it does not need to show the actual displacement of a comparable amount of greenhouse gas emissions. (*Id*. at 15.) In essence, the PMPD urges the public to trust that more greenhouse gases will be reduced throughout the greater electric systems than will be added as a result of the Project. Mr. Walters from the Energy Commission Staff explained at the evidentiary hearings that Staff did not calculate, nor even identify, the GHG reductions that could be expected from any of the sources alleged to be affected by the Project. When asked by Mr. Rostov "did you net out that the reductions from Units 1 to 3 out of your analysis to get like 600,000 emissions?" (2/3/10 RT:241:2-4.) Mr. Walters responded "No. Our analysis was broader than that. It included more than just the Encina plant […] we look at this in a system-wide basis, we are not looking at this as a point source." (2/3/10 RT:241:5-11.) Mr. Rostov then asked, "But some of the net reductions will come from the Units 1 to 3, right, and you counted those - - you counted a baseline of 240,000, correct?" (2/3/10 RT:241:14-17.) To which Mr. Walters replied:

> No, not exactly. As I indicated, we're doing it system-wide. There will be reductions from various sources, including Units 1 through 3; there will be reductions from Units 4 and 5, which would need to operate less; there would be reductions from other units across the area, the peaking units, **but we do not quantify any specific unit**.

(2/3/10 RT:241:18-24.) [Emphasis added]. He explained that "[t]here's no specific quantification because there's no specific knowledge of which plants would go off at any particular time . . . ." (2/3/10 RT:242:3-5.) Mr. Walters explains that "[i]t is quantitative to the point of us being able to

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set forth "an error in fact.") Moreover, the CEQA record is incomplete without considering the Commission's own ability to model to GHG emissions.

identify it as being a reduction, that there is a negative value. It's not -- that is quantitative. It's not specific, but it is quantitative." (2/3/10 RT:254:4-7.) Mr. Layton reports that Staff "found that it's negative emissions, it is a decrease in emissions. That seems to be an appropriate level of quantification to allow a decision to be made." (2/3/10 RT:316:15-18.) To avoid any further analysis, the PMPD simply relies on Staff's unsupported conclusion that operation of the CECP would displace some unknown number of other, less efficient plants somewhere in the system.

The lack of substantial evidence is analogous to the facts in *Apartment Ass'n of Greater L. A. v. City of L. A.* (2001) 90 Cal.App.4th 1162. In that case, the court found that the petitioners, a residential landlords association, failed to produce substantial evidence because the expert's opinion was speculative in nature. (*Id*. at 1175-76.) At issue was a housing code enforcement program adopted by the city, and the petitioners were arguing that this program would have significant impacts on the environment. (*Id.* at 1175.) The petitioner's expert testified that the program could *potentially* have an effect on the environment, and that *it was reasonable to assume* that many units would need repair throughout the city. (*Id.* at 1175-76.) The court said such "expert testimony" did not amount to substantial evidence:

> We do not believe an expert's opinion which says nothing more than "it is reasonable to assume" that something "potentially…may occur" constitutes…substantial evidence... "Substantial evidence" is defined in the CEQA guidelines to include "expert opinion supported by facts." It does not include "argument, speculation, unsubstantiated opinion or narrative."

(*Id.* at 1176; see also *Citizen's Com. to Save our Vill. v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1170-71 [court stressed that "speculation and conjecture" regarding a project's potential environmental impacts do not amount to substantial evidence, even when the speculation and conjecture is posed by an expert].)

Here, the PMPD's net reduction conclusion is not supported by substantial evidence. The blanket assertion that the project will reduce emissions in comparison with the existing baseline

(PMPD GHG at 14) is exactly the type of "unsubstantiated opinion" and "clearly inaccurate" claim CEQA rejects. (Pub. Res. Code § 21082.2(c); *Laurel Heights*, 47 Cal. 3d at 409 n.12 ["[a] clearly inadequate or unsupported study is entitled to no judicial deference"]; *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17 ["conclusory statements do not fit the CEQA bill"].) CEQA is based on analysis and disclosure, not blind faith in the public agency's unsubstantiated claims.

2. Using the Western Electric Grid as the Greenhouse Gas Emissions Baseline Fails to Inform the Public and Decisionmakers of the Significant Impact of the Project.

The PMPD's "Western Electric Grid" baseline provides an illusory basis for a finding of no significant adverse impact and masks the actual increased emissions that will occur from this Project. By describing the environmental baseline as the Western Electric Grid, the public and decisionmakers are not given the information needed to partake in a meaningful analysis of the environmental impacts of CECP. As the California Supreme Court noted, "[a]n approach using hypothetical allowable conditions as the baseline results in 'illusory' comparisons that 'can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent." (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal. 4th 310, 322 [quoting *Environmental Planning Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 358].)

Rather than using a quantified analysis that would provide actual data for the public and decisionmakers to evaluate, the PMPD expands the baseline to consist of the entire Western electric grid, but this grid baseline is so vague that it is meaningless. The PMPD provides no number for the amount of GHG emissions from the Western Grid and its provides on quantitative analysis of the effect of adding the CECP. Mr. Hunt, an expert for the Center, testified that, while there has been a qualitative analysis of the general characteristics of natural-gas generation plants, the FSA upon which the PMPD is based has not shown any quantitative data about the impact of this specific

project. (2/3/10 RT:186:18-187:3.) He testified that "to make a decision on this plant […] you need to have a quantitative framework that allows you to say in a given situation, yes or no based on this analysis." (2/3/10 RT:187:3-6.) The PMPD's analysis would allow the siting of an endless number of additional gas-fired plants and fails to show that the alleged GHG benefits are not negated by the unanalyzed continued addition of similar fossil-fuel plants approved under the same vague guise of "increased efficiency," "local capacity requirements," and "integration of renewables." As explained below, there is insufficient evidence to support the conclusion that siting this new power plant at this location will reduce emissions of greenhouse gases either through the dedicated shutdown of specific plants or by facilitating the integration of renewables. (See *infra* Sec. I.C.2 & 4.)

In addition, the PMPD does not identify the assumptions upon which it relies for the environmental baseline that it does use. "The decisionmakers and general public should not be forced to sift through obscure minutiae or appendices in order to ferret out the fundamental baseline assumptions that are being used for purposes of the environmental analysis." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 659.) For example, the PMPD contains a table that discusses the efficiency of the Project compared to other units in the San Diego area and cites to similar tables in the Final Staff Assessment. (PMPD GHG at 13.) However, nowhere in the PMPD is a there a formula to convert the gains in efficiency to a corresponding amount of greenhouse gas reductions. To be adequate, information in an EIR must inform the public. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 & n.12 ("*Vineyard*") [finding "unexplained" groundwater figures inadequate]; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953-54 [holding inadequate EIR's "recitation of month-end lake levels" without "explain[ing] how those lake levels were derived or maintained"]; *San Joaquin Raptor*, 149 Cal.App.4th at 663 [holding that estimate of

Project's groundwater use inadequately informed the public]. *Cf. Napa Citizens for Honest Government v. Napa Cty. Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 363 [holding that the EIR "fulfilled its informational purpose" because its drafters "explained in detail their calculations of the impact the Project would have on traffic"].) Here, the PMPD fails to proceed in a manner required by law, because it does not include the data and calculations underlying the GHG emission reduction assumptions. (See *Vineyard*, 40 Cal.4th at 442.)

3. The Project Is Not Part of a Statewide Energy Plan nor Part of a Plan to Reduce Greenhouse Gases.

The PMPD avers that the addition of certain types of natural gas plants, such as the CECP, to the electric system produces generalized benefits even though the PMPD does not contain specific analysis to show that this particular plant in this particular location is needed to reduce carbon emissions and to integrate renewables. (PMPD GHG at 9-17; *cf*. 2009 IEPR at 110 [Commission discussion of Committee Guidance concludes that "[t]he question remains as to the quantity, type, and location of natural gas-fired generation to fill remaining electricity needs once preferred resource targets are achieved"].)

The PMPD, in essence, treats the building of a mid-merit natural gas plant as a part of an existing energy plan, and then evaluates the environmental impacts of CECP based on its impact on the grid generally. Similar efforts have been rejected in a case in which the agency compared a proposed project to an existing plan, rather than the existing environmental setting. (See, e.g., *CBE v. SCAQM*, 48 Cal.4th 310*; Woodward Park Homeowners Assoc., Inc. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 707-711 [quoting *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354] ["CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area."].)

A comprehensive statewide energy plan for the siting of new natural gas plants, the integration of thirty-three percent renewables, and the retirement of old plants would be very good public policy. Such a policy could evaluate whether the energy system is on track to achieve greenhouse gas reductions. However, no such plan exists. Mr. Hunt testified that:

> [t]he analysis provided so far by the FSA and CAISO, I think, would fail in almost every case to give you a no answer on a proposed natural gas plant. How you say no to a plant that has modern features under the analysis to date, you couldn't, because you can say truthfully, well, yes, it will help with renewables as a backstop resource, yes, it will help with LCR, et cetera et cetera; but the question is how much, where and when. Those are the answers you should be seeking in the analysis.

(2/3/10 RT:187:7-16.) These questions were not answered even though Mr. McIntosh, the ISO representative testifying on behalf of Staff, explicitly concurred with Mr. Hunt, stating that more quantitative analysis "is the correct thing to do." (2/3/10 RT:218:16-18.) Mr. McIntosh stated that the studies had not yet been completed to identify the locations and amount of natural gas generation needed to provide backup for achieving thirty-three percent renewables by 2020. (2/3/10 RT:225:10-26:12.) Staff could not identify how, where, or what type of renewable sources the CECP would specifically help to integrate into the electricity system, but instead claimed that the CECP has many of the characteristics of a plant that may help with such integration. (See, e.g., 2/3/10 RT:162-163 and 303-309.) There is no comprehensive plan to integrate this Project with new renewables and no CEQA document evaluating that plan. (See CEQA Guidelines § 15064.4(b)(3) [one factor in determining the impact of GHG emissions is "[t]he extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions"].)

The CECP, however, is not part of a plan to reduce greenhouse gases. The Committee Guidance specifically addresses this issue:

> Although CARB has already adopted the AB 32 Scoping Plan, the regulations to implement the Plan are still being drafted and are

> planned to take effect before 2012. The Energy Commission cannot rely on the prospect of future regulations to support a determination of whether power plants in the licensing process will have a significant adverse impact on the climate. Therefore, during this short interim period before the AB 32 regulations take effect, the Siting Committee believes that the Energy Commission should not rely on CARB's programmatic approach for its CEQA analysis and mitigation. Rather, during this interim period, we recommend that the Energy Commission analyze each project according to basic CEQA precepts for determining (1) whether the project has a significant adverse cumulative effect, (2) if so, whether feasible mitigation can be required for the project, and (3) if not, whether the project has overriding benefits that justify licensing the project.

(Committee Guidance at 2.) There is no information in the record showing that this Project is part of a statewide program to integrate renewables or is part of any agency's plan to effectively reduce greenhouse gases from the electric system. While a comprehensive statewide energy plan for te siting of new natural gas plants, the integration of thirty-three percent renewables, and the retirement of old plants would be very good public policy, no such plan exists. Moreover, the regulatory regime for AB 32 is still in its infancy, and the Cap and Trade component is subject to a Superior Court decision that may delay its implementation. The PMPD's claim that this Project complies with an as-yet non-existent regulatory regime misleads the public and decisionmakers.

4. The Three Part-Test in the Avenal Decision is Too General to Comply with Informational Requirements of CEQA.

The PMPD improperly finds that the three-part test in the Avenal decision is consistent with CEQA guidelines sections 15064.4(b)(1) & (3) and provides sufficient analysis to show that CECP will reduce GHG emissions. (PMPD GHG at 5). The Avenal Decision requires new natural gas plants to meet the following three requirements:

> (1) Not increase the overall system heat rate for natural gas plants;
> (2) Not interfere with generation from existing renewable facilities nor with the integration of new renewable generation; and
> (3) Take into account the factors listed in (1) and (2), reduce system-wide GHG emissions and support the goals and policies of AB 32.

(*Id*.) These general standards articulated in the Avenal decision are insufficient to provide an adequate CEQA analysis of greenhouse gas emissions. Based on these factors, the PMPD improperly uses a qualitative quasi-programmatic analysis of the electric system when it should have been conducting a site-specific analysis. These factors would allow the Commission to analyze the greenhouse gas emissions from all new combined cycle natural gas power plants with similar characteristics because these plants have the generalized characteristics for integrating renewables. These standards dismiss the climate change implications of CECP rather than adequately studying the impacts, feasible mitigations, and alternatives of this specific Project. (See, e.g., *CBE v. SCAQMD*, 48 Cal.4th at 325 [an agency must follow "the dictates of CEQA and realistically analyz[e] [a] project's effects. After proper analysis, the agency might decide to disapprove the project because of its immitigable adverse effects or to approve it with a finding of overriding considerations"].)

The PMPD argues that there is no need for the CEQA analysis to determine the gross amount of greenhouse gases emitted by the Project, because the carbon intensity of the Project is less than the carbon intensity of the electric system, and this will result in a net reduction of greenhouse gases. (PMPD GHG at 11.) However, the PMPD provides no support in CEQA for the proposition that Staff can solely rely on an increase in efficiency to make a finding that substantial new emissions of greenhouse gases are not a significant impact. This type of reasoning was expressly rejected in a federal case brought by the Center that found that the adoption of new national fuel efficiency standards that increased these efficiency standards still requires an analysis of the total emissions of greenhouse gases from the rulemaking even though the efficiency of the vehicle fleets increased.

(*Center for Biological Diversity v. National Highway Traffic Safety Admin*. (9th Cir. 2008) 538 F.3d 1172, 1216-17.)[8]

Moreover, there is no analysis of how the project will affect the energy system over the thirty-year lifetime of the project. CEQA requires analysis of impacts over the life of the project, not one particular instant. (Laurel Heights, 47 Cal.3d at 396-99 [reasonably foreseeable future activity must be described and analyzed in EIR].) Permitting this plant creates additional fossil fuel infrastructure for decades. "Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." (CEQA Guidelines § 15126.2(a).) Even if the Project operates at an average efficiency greater than the plants on the current grid, there is no analysis of whether building this new source of greenhouse gases will comply with AB 32 and the state of California's goal of eighty percent reduction of GHGs by 2050. (2/3/10 RT:190:11-20.; see also Sec. I.A.3, *supra*.)

This approach is contrary to the 2009 IEPR which states: "Emissions from natural gas generation account for a large portion of in-state GHG emissions from the electricity sector, so it is essential for the Energy Commission to consider GHG impacts of natural gas plants in its power plant licensing process." (2009 IEPR at 47-49.) Relying on the general Avenal criteria that justify the permitting of a whole class of natural gas plants does not constitute the site specific analysis required by CEQA.

B. The Cumulative Impacts Analysis for Greenhouse Gas Emissions Is Inadequate Because It Fails to Account for All Past, Present, and Probable Future Projects.

What the PMPD was required to do – but did not – was to evaluate the cumulative significance of greenhouse gas emissions. (See Pub. Res. Code § 21083(b)(2).) CEQA requires a

[8] The Center's case applied in the context of the National Environmental Policy Act ("NEPA"), but California Courts have looked to NEPA as "persuasive" authority to the interpretation of CEQA. (*See, e.g., No Oil, Inc. v. City of Los Angeles* [1974] 13 Cal.3d 68, 86, fn. 21.)

cumulative impacts analysis of a proposed project where its possible environmental effects are "individually limited but cumulatively considerable." (Pub. Res. Code § 21083(b)(2).) "[A]n agency may not…[treat] a project as an isolated 'single shot' venture in the face of persuasive evidence that it is but one of several substantially similar operations…. To ignore the prospective cumulative harm under such circumstances could be to risk ecological disaster." (*Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408 [(quoting *NRDC v. Callaway* (2d Cir. 1975), 524 F.2d 79, 88 [referring to NEPA].)]

As the PMPD repeatedly states, CECP is part of a much larger system, but the PMPD does not acknowledge the many other fossil fuel plants have already been built and licensed in California by this Commission, and there is no mention of new plants in the rest of the Western grid. (See generally PMPD GHG at 1-18.) This information must be presented as either: 1) "[a] list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or…," 2) "[a] summary of projections contained in an adopted local, regional or statewide plan or related planning document." (CEQA Guidelines § 15130(b)(1)(A)-(B); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 739-40.) Since there is no applicable adopted general plan or related planning document, the list method must be used in the instant case. (See Sec. I.A.3.) However, the PMPD contains no such list, and the omission of both past and probable future projects from the cumulative impacts analysis hides the true significance and severity of the impacts of CECP.

With its cumulative impacts analysis, the PMPD treats CECP as the only project that the Commission has been asked to license. In contrast, for the purposes of its baseline analysis, the PMPD argues that all the power plants in the Western Electric Grid must be analyzed. The PMPD

cannot have it both ways. The California Supreme Court explained that "an EIS/EIR must reasonably include information about past projects to the extent such information is relevant to the understanding of the environmental impacts of the present project considered cumulatively with other pending and possible future projects." (*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection ("EPIC*) (2008) 44 Cal. 4th 459, 525.) Including relevant past projects in the cumulative impacts analysis "signifies an obligation to consider the present project in the context of a realistic historical account of relevant prior activities that have had significant environmental impacts. Such historical accounting assists, for example, in understanding development trends." (*EPIC*, 44 Cal. 4th at 524.) Probable future projects include "not only approved projects under construction and approved related projects not yet under construction, but also unapproved projects currently under environmental review with related impacts or which result in significant cumulative impacts." (CEQA Guidelines, Discussion Following §15130 <http://ceres.ca.gov/ceqa/guidelines/art9.html> as of June 8, 2011; see *Gray v. County of Madera* (2008) 167 Cal.App. 4th 1099, 1127-1128 ["probable future project" consists of "any future project where the applicant has devoted significant time and financial resources to prepare for any regulatory review"].)

Without the inclusion of the past, present, and probable future projects in the cumulative impact analysis of GHG emissions, the cumulative impacts analysis is wholly deficient. (CEQA Guidelines § 15130(b)(1)(a).) At the February Evidentiary Hearing, Mr. Layton admitted that the cumulative impacts analysis does not calculate the effect of GHG emissions from all past, present, and future projects. Specifically, he stated that the analysis did not include the GHG emissions from any of the power plants that have already been licensed by the CEC, the nearly 7,000 megawatts of proposed power plant projects that are currently in licensing proceedings, nor any of the fossil fuel power projects that came online between 2001 and 2009. (2/3/10 RT:259:11-261:16.) The

following question and answer summarize his response: "Mr. Rostov: [D]id the cumulative impacts analysis calculate the GHG emissions from all these past, present, and future projects we just described in addition to the CECP total amount of carbon equivalent emissions and determine how that would affect climate? Mr. Layton: We did not." (2/3/10 RT:261:10-16.)

The PMPD's claim that Staff did evaluate future projects is not supported by the testimony nor by the PMPD's cite to the FSA. (PMPD GHG at 18 (citing Ex. 222, p. 4.1-119-120).) For example, SDG&E recently filed an application to the Public Utilities Commission requesting that three proposed power plants, Escondido Energy Center (45 MW), Pio Pico Energy Center (305 MW), and Quail Bush Power (100 MW) be used to support local reliability and allow for the shutdown of the Encina power plants prior to 2017. (See Carlsbad Motion, SDG&E Application at 10 & 16).[9] These projects are not considered in the FSA nor in the PMPD. Since these projects seek to achieve the same aims as CECP, permitting them will provide the energy necessary to achieve those aims, (*Id.*) and will add to the cumulative GHG and other air emissions. Moreover, Mariposa Energy Project (200MW) in northeastern Alameda County and Oakley Generating Station Project (624 MW) in eastern Contra Costa County that very recently were approved by this Commission on May 18, 2011 (Center Response and Motion Exh. K) were also not considered in the cumulative impacts analysis. The PMPD's statement in the GHG section conclusion rings hollow: "It is . . . reasonable to assume that at some point in the future there will be a decrease in the need for additional gas-fired generation. Therefore, we cannot and should not continue adding gas-fired plants *ad infinitum.*" (PMPD GHG at 18 (original emphasis).)

Here, the PMPD not only fails to *analyze* the cumulative effects of related past, present, and reasonable foreseeable future projects, it does not even *disclose* that such projects exist. This is a

[9] Concurrent with this Comment, the Center submitted support for this motion and in the alternative a request to reopen the evidentiary to include these documents and others. (See Center's Response and Motion.)

fatal mistake given that climate change is the classic example of a cumulative problem. (*CBD v. NHTSA*, 538 F.3d at 1216 [the impact of greenhouse gas emissions on climate change must be studied in a cumulative impacts analysis].) "One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." (*Communities for a Better Env't v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.) Emissions from numerous sources combine to create the most pressing environmental and societal problem of our time. (See *Mass. v. EPA* (2007) 549 U.S. 497, 521 ["harms associated with climate change are serious and well recognized"]; Health & Safety Code § 38501(a) [California Legislature declaring that "[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California."].)

The PMPD's GHG section does not describe the GHG emissions already occurring from existing power generation in the Western Grid. It also does not include a discussion of the GHG emissions already occurring from other large sources, such as vehicle emissions. Instead, the PMPD relies on the efficiency of CECP and the theory of economic dispatch as substitutes for the required cumulative impacts analysis. (PMPD GHG at 17-18.) Much of the argument the PMPD makes is that a minimal amount of efficient natural gas plants will likely be needed to support a high renewable energy grid. (PMPD GHG at 15-17.) However, without knowing how many other natural gas and other fossil fuel plants are already built or licensed or where these plants should be located to provide this support, the public and decisionmakers cannot accurately balance the need for the CECP against the harms that will come from the addition of 846,000 tons of greenhouse gases to the already overburdened atmosphere. Thus, the PMPD's cumulative impact analysis of greenhouse gases (See PMPD GHG at 17-18) violates CEQA. To conclude that CECP will result in no

significant cumulative impact without analysis of past, present, and future projects and their cumulative effect on global warming is arbitrary and capricious.

C. The PMPD Is Based on Factual Errors

The Commission should approve neither the Project nor the PMPD because the PMPD is based on factual errors.

1. The Encina Power Plant is Not Under a Reliability Must Run Contract.

The PMPD incorrectly states that units at Encina are under a RMR ("Reliability Must Run") contract. In support of its conclusion that the CECP will reduce GHG emissions because it will displace older, less-efficient plants within the electricity system, the PMPD states: "In the San Diego area, the CAISO has 'reliability must run' contracts with several old, less-efficient plants in part to provide ancillary services." (PMPD GHG at 12.) The PMPD cites the FSA, which states: "[t]he units—South Bay and Encina—have RMR (reliability must run) contracts with the CAISO for [the purpose of meeting load or maintaining grid stability in the San Diego load pocket]." (Exh. 222, pp 4.1-111.) The CEC Staff's expert witness from the CAISO, Jim McIntosh, also testified that he believed Encina units 4 and 5 were under RMR contracts. (2/3/10 RT:197: 4-24.)

However, the PMPD, CEC Staff, and Mr. McIntosh are incorrect. In fact, the RMR contract for Encina units 4 and 5 had been released as of December 31, 2007. (See Center Response and Motion Exh. A, CPUC Final Report on the Audit of the Encina Power Plant at 11; see also Exh. 377 and Center Response and Motion Exhs. B &C, 2008 RMR/Black Start/Dual Fuel Contract Status and 2009 RMR/Black Start/Dual Fuel Contract Status, respectively.) CEC and CAISO should have been aware of this long before the FSA was drafted and the public hearings took place. Yet, Staff and CAISO placed incorrect information into the record.

Furthermore, while the FSA was drafted when the RMR contract for the South Bay units was still in place. Well over a year has passed since that time and the factual landscape is now quite

different. As of December 31, 2010, the RMR contract for the South Bay units was released as CAISO determined that "local power requirements are lower than the California Energy Commission (CEC) had previously projected in its 2009 forecasts used in the ISO's 2011 Local Capacity Technical Analysis for 2011 and 2012" and that the "units are no longer needed for RMR service." (See Center Response and Motion Exh. D, CAISO letter to Mr. Randy Hickok (October 15, 2010).)

2. CECP is Not Necessary for Local Reliability or for Shutting Down the South Bay and the Encina Power Plants.

The PMPD also states that two of the project objectives of the CECP are to "meet[] the expanding need for new, highly efficient, reliable electrical generating resources that are dispatchable by the CAISO, and are located in the "load pocket" of the San Diego region" and to "allow[] the retirement of existing EPS units 1, 2, and 3, and assist[] in the retirement of the South Bay power plant and the eventual retirement of existing EPS Units 4 and 5." (PMPD Alternatives at 2.)

First, the PMPD uses incorrect or outdated information to paint a picture of resource inadequacy in the San Diego load pocket without the CECP. The PMPD cites to 2008 local capacity requirements that have changed dramatically in subsequent years. (PMPD GHG at 14; *cf*. Center Response and Motion, Exh. E, CAISO 2012 Local Capacity Technical Analysis – Final Report and Study Results (April 29, 2011).) The PMPD also fails to acknowledge that units 3 and 4 at the South Bay power plant (more than half its capacity) were retired as of December 31, 2009. (Center Response and Motion Exh.L.) Instead, the PMPD claims that a large shortfall in local capacity would occur if the entire existing South Bay and Encina facilities were to finally be retired and argues that the CECP is necessary in order to allow these retirements. (PMPD GHG at 14.)

However, the CECP is wholly unnecessary for local reliability in San Diego. As explained above, CAISO has already determined that even without the CECP, the South Bay plant is no longer

needed for local reliability. Indeed, the remaining three units at the South Bay power plant ceased operation on December 31, 2010 and the facility has now begun the decommissioning and demolition process. (See Center Response and Motion, Exhs. L-M, Port of San Diego articles "South Bay Power Plant ceases operation" (January 6, 2011) and "Update on South Bay Power Plant removal" (May 20, 2011).)

Further, in testimony filed before the California Public Utilities Commission seeking authority to enter into purchase power agreements with three proposed new generating projects in the San Diego load pocket, SDG&E explains:

> …with the resources additions that are proposed in this Application, the SDG&E load pocket will have sufficient resources to meet total local R[esource] A[dequacy] needs for all customers….[and] that sufficient resources would exist to allow for the full retirement of the Encina Power Plant prior to the end of 2017, the date at which it would need to meet the State's new OTC policy.

(See Carlsbad Motion, Prepared Direct Testimony of SDG&E Company in support of Application for Authority to Enter into Purchase Power Agreements with Escondido Energy Center, Pio Pico Energy Center, and Quail Brush Power (May 19, 2011) at 12-13.) In so concluding, SDG&E explains that:

> Following the Commission's approval of SDG&E's resource need in its 2006 LTPP, a number of the assumptions used to determine that need have changed. Thus, to fully support these additions SDG&E looked at the local grid need based on updated data….In reassessing the need for system resources, SDG&E updated the need based on revised assumptions for both load and resources. SDG&E considered the CEC's latest forecast,produced in late 2009, as well as updates to all resources including using the CAISO current NQC resource ratings. The grid reliability need is the amount of resources needed to meet a summer peak day load that is expected to occur once every 10 years after the largest generating unit and the largest transmission line is out of service.

(See *Id.* at 12 (footnotes omitted).) SDG&E concludes based on its reassessment that the three projects with which it has chosen to enter into purchase power agreements would provide enough capacity to meet the needs of the San Diego region and to shut down the Encina plant in full – even without the construction of the CECP.

This testimony shows that the bases for the PMPD's assumptions that the CECP is needed for local reliability or for the full retirement of both South Bay and the Encina plant are in error. The South Bay plant has already been completely shut down, and the capacity needed to replace Encina is already in process, though, as discussed in section I.B above, the PMPD and the FSA notably failed to identify or analyze the projects identified in the SDG&E filing.

3. The No Project Alternative's Analysis is Based On Incorrect Facts

Despite the claims of the No Project alternative, the CECP is not necessary to retire the South Bay and Encina once though cooling power plants. (See *supra*)

Moreover, the claim that not building CECP will result in Units 1 to 3 "utilitizing over 220 million gallons of ocean water per day for once-through cooling that would otherwise cease to occur" is inaccurate, because the statement uses the permitted levels rather the actual use of Units 1 to 3, which is about ten times less. A CEQA baseline must be based on actual use, not permitted levels. (*CBE v. SCAQMD*, 48 Cal.4th at 322.) Energy staff reported that the correct CEQA baseline based on actual use is 23.6 million gallons per day ("mgd") rather the 220 mgd reported by the PMPD. (CEC Staff Memo, Post-Evidentiary Hearing Developments for Carlsbad Energy Center Project (May 28. 2010) at 3.)

In any event, the Encina plant is now subject to the State Water Board's Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, which requires compliance by December 31, 2017. *Id.*, Attachment 1 at 14. Therefore, the PMPD's conclusions that all five units at the Encina plant would continue to operate as is into the foreseeable future, and that the retirement of units 1 – 3 would be indefinitely delayed is wrong. As discussed above, the Encina plant will be able to be fully retired before the 2017 OTC policy compliance deadline even without CECP because of power purchase agreements signed by SDG&E with other new generating facilities in the region. Even if

this weren't the case, the OTC policy would require the old Encina units to be retired or replaced by 2017, undermining the claimed environmental benefits of the CECP purported in the PMPD.

4. CECP is Not Needed to Integrate Renewables.

The PMPD's claims that this specific project will support the integration of renewables is not supported by the evidence. The PMPD's finding that the CECP is needed to meet the 20% renewable standard and the recently legislated 33% renewables mandate by 2020 is inconsistent with testimony at the evidentiary hearing and more recent CAISO studies. Mr. McIntosh, Staff's witness from ISO, agreed with the Center's witness Mr. Hunt that more studies needed to be done to determine which specifically located new natural gas fired plants are necessary to integrate the projected 33% renewables. (2/3/10 RT:218:8 –219:8.) While the record shows that this may be the type of plant that could help integrate renewables, there is no specific showing that this plant is itself necessary or well located to perform this function. (2/3/10 RT:203:4-6 [Mr. McIntosh states: "My testimony is that you can get those attributes at other locations; I'm just talking about those are the type of machines we need"]; see also 2/3/10 RT:225:24-226: 12.)

The PMPD's finding "that power plants with the operational flexibility of and offering the ancillary services provided by the CECP are needed by California to meet its renewable energy policy goals" is undermined by recent CAISO studies. The CAISO Integration of Renewable Resources – 20% RPS study shows that the existing "generation fleet possesses sufficient overall operational flexibility to reliably integrate 20 percent RPS in over 99 percent of the hours studied." (See Center Response and Motion Exh. I, CAISO Integration of Renewable Resources – 20% RPS, August 31, 2010 at *xv*.) Even more recent modeling regarding the integration of 33 percent renewables into the existing grid conducted by ISO for the Public Utilities Commission Long-Term Procurement Proceeding concluded that "[a]ssuming CA achieves demand side objectives preliminary results indicate most operational requirements can be satisfied with potential need for

measures to address some over-generation conditions." (See Center Response and Motion Exh. J, CAISO Summary of Preliminary Results of 33% Renewable Integration Study – 2010 CPUC LTPP Docket No. R.10-05-006 (May 20, 2011) at Slide 51.) The studies for which Mr. McIntosh and Mr. Hunt urged the Committee to wait are now available and undermine the factual basis of the PMPD's GHG analysis.

5. The Use of LNG at CECP is Not Speculative

The use of LNG by the CECP and in the San Diego region is not, as the PMPD concludes, speculative. (PMPD GHG at 15.) Since April of last year, deliveries of LNG from Indonesia to Costa Azul have been occurring at a rate of approximately 3 billion cubic feet every 12 days. (See Center Response and Motion Exh. H, CEC West Coast LNG Projects and Proposals (December 2010) at 25 and Exh. Q "Mexico's Costa Azul re-exports first LNG cargo," Platts (January 10, 2011).)

Furthermore, the use of regasified LNG in San Diego has caused a great deal of concern within the San Diego County Air Pollution Control District ("SDCAPCD"). SDCAPCD lobbied unsuccessfully against the California Air Resources Board's ("ARB") recent revisions to the CNG fuel specification standards, which allowed LNG-derived natural gas to be used in natural gas vehicles. (See Center Response and Motion Exh. G, SDCAPCD Comments on the Air Resources Board May 19, 2010 Public Meeting on Revising the Compressed Natural Gas Fuel Specifications for Motor Vehicles (June 14, 2010).) In its comments to ARB, SDCAPCD explained that it was very likely that the proposed (and ultimately adopted) revisions to the CNG fuel specifications would remove the last remaining regulatory barrier to a market in which ALL natural gas imported into the San Diego region would be LNG-derived gas from Sempra's Costa Azul terminal in Mexico. (*Id.* at 4; see also Center Response and Motion Exh. P, San Diego Union Tribune article "Gas from afar pollutes here, critics say" (January 13, 2011).) This information contradicts the

testimony of the Staff's Witness Mr. Walters, who explained his theory that market forces make the delivery of LNG to the Project speculative. (PMPD GHG at 15 (citing 2/3/10 RT:170).)

6. The PMPD Alternative Generation Analysis is Based on Too High of Price for Distributed Solar Energy.

The alternatives analysis in the PMPD does little more than recite the FSA word for word and fails to respond meaningfully to the Center's brief or to expert witness Tam Hunt's testimony regarding availability and market potential for alternative generation resources such as solar PV. (Exh. 645 at 14-20.) In fact, while it admits that the technical potential for rooftop solar is capable of meeting all the San Diego region's peak energy needs, the PMPD then flatly dismisses this alternative because "the cost of energy from rooftop PV is currently not on a par with that from the CECP" relying on two state programs that have resulted in fewer installed MW than expected. (PMPD Alternatives at 15.)

This is a disappointing perspective from one of the state agencies charged with implementing California's aggressive renewable energy goals, including Governor Brown's goal of 12,000 MW of rooftop solar. It is also factually incorrect. Earlier this year, Southern California Edison submitted to the CPUC contracts for procurement of renewable energy resulting from the renewables standard contracts program. (See Center Response and Motion Exh. F, SCE Advice Letter 2547-E (January 31, 2011).) SCE sought approval of 20 power purchase agreements for solar PV projects ranging in size from 4.7 to 20 MW – for a total of 250 MW worth of solar – for prices ***below the market price referent***, which is the estimated cost of electricity from a 500-MW combined cycle natural gas plant. (See Center Response and Motion Exh. N, "SCE Buys 20 Years of Solar Power for Less than Natural Gas," CleanTechnica (February 1, 2011) and Exh. O, "Solar PV Becoming Cheaper than Gas in California," Renewable Energy World (February 8, 2011).) So even if the capacity from CECP were needed in the San Diego region (and we have shown above that it is not), such capacity

could realistically and cost-effectively be met through clean, renewable alternatives like solar PV, which were dismissed based on inaccurate facts in the PMPD.

D. The No Project Alternative is Legally Deficient.

The No Project Alternative does not accurately discuss what would occur if the project were not built. An EIR must discuss and analyze a "no project" alternative. (CEQA Guidelines Section 15126.6(e)(1).) The no project alternative is "a factually based forecast of the environmental impacts of preserving the status quo," providing the decisionmakers with a "base line against which they can measure the environmental advantages and disadvantages of the project and alternatives to the project." (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 917-918.) The purpose behind a no project alternative is to "allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." (CEQA Guidelines Section 15126.6(e)(1).) Moreover, the analysis should be grounded in reality and not "analyze a set of artificial assumptions that would be required to preserve the existing physical environment." (CEQA Guidelines Section 15126.6(e)(3)(B).)

The environmental analysis of the No Project Alternative is legally deficient because it relies upon a set of artificial and inaccurate assumptions and does not consider the three power plants for which SDG&E has signed Power Purchase Agreements, Escondido Energy Center, Pio Pico Energy Center, and Quail Brush Power. (Carlsbad Motion, SDG&E Application at 1.) Specifically, the environmental analysis incorrectly assumes that all five EPS units will continue to operate "as is" and the retirement of Encina Units 1, 2 and 3 will be indefinitely delayed. (PMPD Alternatives at 16.) SDG&E's application challenges this analysis by putting forward a plan to retire units 1, 2 and 3 by 2013, with the remaining capacity to be retired before 2017. (Carlsbad Motion, Anderson Testimony at 10.) Additionally, the PMPD incorrectly assumes increased air pollution from running older units longer. (PMPD Alternatives at 16.) However, the SDG&E Application reveals that the

three proposed projects have on-line dates of 2012, 2014 and 2014. (Carlsbad Motion, SDG&E Application at 2-3.) The environmental analysis also assumes that new sites would have to be found in the San Diego region, whereas the Application states that all three sites with PPAs are in the San Diego region. (Carlsbad Motion, SDG&E Application at 2-3; PMPD Alternatives at 16.) Finally, the PMPD states that a major reason for rejecting the No Project Alternative is because the CECP can utilize the existing plant's infrastructure. (PMPD Alternatives at 16.) SDG&E's application conversely demonstrates that two of the three projects are proposed at existing power plants. (SDG&E Application at 2-3.) These discrepancies illustrate the faulty assumptions relied upon in the PMPD's analysis and the need to redo the No Project Alternatives analysis to determine whether the No Project Alternative is the superior alternative.

II. The Project Description Is Inadequate Because It Fails to Consider the Use of Regasified Liquefied Natural Gas As Part of the Project.

By failing to consider the use of regasified liquefied natural gas ("LNG") as part of the project description, the environmental analysis fails to inform the public about the whole of the project. "'An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.'" (*San Joaquin Raptor Rescue*, 149 Cal.App.4th at 655 [quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199, 197-98].) However, an EIR that fails to inform, confuses, or misleads the public and decisionmakers is fatally flawed. (*San Joaquin Raptor*, 149 Cal.App.4th at 672 [EIR fundamentally flawed when "public and decisionmakers were not adequately informed about the full scope and magnitude of the Project"].) "If a final EIR does not 'adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project,' informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law." (*Riverwatch v. Olivehain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1201 [quoting *City of Santee v. County of San Diego* (1989) 214 Cal.App. 3d 1438, 1454-55].)

Fuel sources, including LNG, must be identified in the project description and evaluated in the EIR. When applicable, the project description must include the "[t]otal energy requirements of the project *by fuel type* and end use," and the "[i]dentification of energy supplies that would serve the project." (CEQA Guidelines Appendix F § II.A.3, 4.) A "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . ." (CEQA Guidelines § 15378(a).) Thus, the project description and the environmental effects analysis will not be adequate and complete without a full description of near-term and long-term sources of fuel that can be relied on to operate the plant, as well as an analysis of any significant increase in fuel needs brought about by the project. (See *Vineyard,* 40 Cal.4th at 421 [EIR held insufficient because it did not "clearly and coherently" explain how the project's long-term water demand will likely be met with identified sources, the environmental impacts of using these sources, and how those impacts would be mitigated].)

A. The Use of Liquefied Natural Gas Is Reasonably Foreseeable.

The PMPD's finding that the use of LNG at CECP is speculative is contrary to the evidence. As discussed supra, LNG is already being imported into San Diego County. (See *infra* Sec. I.C.5.) Moreover, it was reasonably foreseeable that regasified LNG would be supplied to the Carlsbad plant due to its close proximity to Sempra's new LNG-receiving terminal in Baja California and the clear intent of Sempra, Southern California Gas Company's and San Diego Gas & Electric's ("SDG&E") parent company, to sell regasified LNG into the San Diego service territory. The project description should have considered regasified LNG as a probable fuel source for the project. "[A]n EIR must address the impacts of 'reasonably foreseeable' future activities related to the proposed project." (*Vineyard*, 40 Cal.4th at 428 [citing *Laurel Heights,* 47 Cal.3d at 398-99].) at 398-99].) The CEQA Guidelines generally address the need to describe future events in an EIR,

stating that "[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines § 15144.)

The Costa Azul terminal is located in Northern Baja Mexico between Ensenada and Tijuana. (Exh. 607 at 4.) The terminal was built at a cost of more than 1 billion dollars and has a send-out capacity of 1 billion cubic feet per day, 100 percent of which is already under contract for the next twenty years. (Exh. 607 at 2-3 and Exh. 608 at 6, 25 & 35.) The terminal is connected to the San Diego area natural gas pipeline. (Exh. 607 at 4-5.) As expert witness Rory Cox explained in his February 3, 2010 testimony to the Commission, "There is a natural gas pipeline network connecting that terminal to southern California at a couple of different receipt points. One of those receipt points is called Otay Mesa, near Tijuana. And at that receipt point it transfers from the gas grid that's in Mexico into the gas grid that's in the SDG&E service territory." (2/3/10 RT:128:9-15.)

Furthermore, Sempra has made it clear that it intends to sell regasified LNG from its Costa Azul terminal into California, and in fact, has already begun receiving shipments of LNG. (Exh. 609 at 1.) In his written testimony, Mr. Cox explained the efforts Sempra and SDG&E have undertaken to date (beyond the $1 billion plus investment in the terminal itself) to secure a place in the San Diego marketplace for regasified LNG delivery. Mr. Cox stated that:

> In 2004, SDG&E made the case at the California Public Utilities Commission that new receipt points on the California/Mexico border were needed. In particular, the company proposed the "Interstate Pipeline Capacity Acquisition Procedure" as a means to "maximize capacity acquisition opportunities with regulatory certainty." (quoting from Exh. 606.) One of the receipt points specified was Otay Mesa, which provides a direct gateway to the same SDG&E service territory that will be served by Carlsbad Energy Center Project.
>
> Bringing natural gas from Mexico into the SDG&E service territory was one of SDG&E's main objectives in that proceeding. SDG&E also asked the CPUC to allow for the authority to renegotiate reduced amounts of natural gas from pre-existing contracts and to terminate the expiring contracts with El Paso Natural Gas Company (El Paso), Transwestern Pipeline Company (Transwestern), and Gas Transmission Northwest Corporation (GTNC) in conjunction with preserving the utilities' rights of first refusal for firm capacity on these interstate pipelines. On September 2, 2004, the CPUC granted these requests.

> SDG&E would be interested in such an arrangement in order to supply natural gas from Costa Azul to the customers in their service territory, largely for electricity generation. They were granted that authority by the CPUC. Once natural gas crosses the Otay Mesa receipt point, it enters into the SDG&E natural gas grid.

(Exh. 647 at 2-3.)

Mr. Cox also explained that Sempra successfully worked to have the PUC weaken the Wobbe Index standards for gas quality coming into California to ensure that regasified LNG (which has a higher Wobbe index than domestic natural gas) could be delivered to California markets. (2/3/10 RT:129-30.)

The Energy Commission's 2009 Integrated Energy Policy Report (Exh. 602) also identifies the Costa Azul terminal as a foreseeable source of natural gas for California. The 2009 IEPR states:

> A potential additional source of natural gas supply is LNG. In the near future, California could receive natural gas from an LNG facility located at Costa Azul, Mexico. The construction of the Costa Azul LNG Terminal was completed last year and still awaits the first of its commercial deliveries. LNG is available, but suppliers at the moment are reluctant to enter the lower-priced Pacific Coast market. When supply does start to flow, North Baja Mexico will have first choice to receive up to 300 MMcf/d to meet its industrial and power plant needs. Any excess in supply [up to 700 MMcf/d] would add to California's supply mix.

(Exh. 602 at 131.)

Finally, in the report titled San Diego Smart Energy 2020, cited by Mr. Cox in his written and oral testimonies (Exh. 647 at 5-6 and 2/3/10 RT:134-5 and 288) and included as Exh. 632, Bill Powers explains that "SDG&E's parent company Sempra Energy will begin operation of its 1,000 million cubic feet per day (mmcfd) Costa Azul LNG import terminal in 2008. Sempra has preliminary approval from the CPUC to reverse flow on the SDG&E natural gas pipeline system to move this LNG from the Costa Azul LNG terminal directly into the San Diego market. The CEC forecasts that this flow reversal will occur in 2009." (Exh. 632, Attachment C, at 99.) In his report, Mr. Powers cites the CEC's 2007 Natural Gas Market Assessment, which makes the following major finding regarding natural gas: "Importation of LNG is expected from Mexico into San Diego through

the Transportadora De Gas Natural De Baja California (TGN) pipeline beginning in 2009." (Exh. 632, Attachment C, at 103.) Powers' report also cites the CEC's 2007 IEPR Natural Gas Forecast – Revised Reference Case as forecasting LNG imports rising to more than 400 mmcfd through Otay Mesa in 2016. (Exh. 632, Attachment C, at 103.) Powers points out that "[t]his flowrate [from the Costa Azul terminal into San Diego] is greater than the average daily natural gas demand forecast by SDG&E for 2010 of 333 mmcfd." (Exh. 632 Attachment C, at 103.)

Although at the time of the hearing, the delivery of LNG was delayed due to market forces (2/3/10 RT:132:2-21.), the likelihood of the CECP running on regasified LNG from Costa Azul was reasonably foreseeable. The CEC has itself forecast that in the near future all natural gas supplied to the SDG&E service territory could be regasified LNG from Costa Azul. The PMPD must, therefore, consider just such a scenario in its analysis of the greenhouse gas emissions from the CECP. This is analogous to the facts of *Vineyard*, where the Supreme Court required the analysis of short-term and long-term water supplies. (*Vineyard*, 40 Cal.4th. at 431.) In *Vineyard*, the Court invalidated a final EIR for a large, mixed-use development project because it neglected to present a plan for long-term provision of water supplies to the development, therefore failing to disclose the impacts of providing water supplies long-term. (*Id.* at 421.) Despite the general identification of intended water sources, the final EIR was insufficient because it did not "clearly and coherently" explain how the project's long-term demand would likely be met with identified sources, the environmental impacts of using these sources, and how those impacts would be mitigated. (*Id.*) If the future availability of water sources is uncertain, CEQA requires a "discussion of possible replacement sources" and an analysis of the environmental effects associated with using these sources. (*Id.* at 432.) Here, there is even less analysis than that rejected by the Court in *Vineyard*. The PMPD discusses the natural gas in general terms but fails to differentiate between the different types of natural gas that may be supplied to CECP.

The PMPD's argument that the use of LNG at CECP is speculative is not supported by the record. Regasified LNG has already flowed from the $1 billion Costa Azul terminal into Southern California and, as established above, both the CEC and the PUC anticipate that up to 700 mmcfd of regasified LNG could flow into the SDG&E service territory in the near future – far more than San Diego's expected demand for natural gas. (See Exh. 632, Attachment C, at 103.) Now, evidence shows that regasified LNG is being used in San Diego County and the one remaining regulatory barrier to full LNG use—CNG Fuel Specification Standard—has been removed. (Center Response and Motion Exh. 6.) (See *infra* Sec. I.C.5 and Center Response and Motion Exhs. G & Q.) It is not, therefore, speculative that over the estimated thirty years of CECP operation, regasified LNG will be used. An agency may only validly conclude impacts are too speculative "*after thorough investigation.*" (CEQA Guidelines § 15145 [emphasis added].) Were it otherwise, the public would be forced to rely on an agency's bare conclusion, thereby precluding informed self-government. (See CEQA Guidelines § 15003.) Instead, the PMPD improperly relies on the mantra of "speculation" to avoid the necessary analysis of the impacts of using LNG during the lifetime of the Project.

B. The Use of LNG Increases Greenhouse Gas Emissions from the Project.

The environmental analysis for CECP should evaluate all emissions, including additional greenhouse gases emitted from the use of LNG as a fuel source for the Project. CEQA requires that the environmental effects analysis include measurement of "all project-related pollution emissions." (*Kings County Farm Bureau v. City of Hanford*, (1990) 221 Cal.App.3d 692, 716.) The environmental effects analysis should include both short-term and long-term effects as well as both direct and indirect effects. (CEQA Guidelines § 15126.2(a).) Mr. Cox testified that the use of regasified LNG could add up to a twenty-five percent increase in greenhouse gas emissions from the project. (2/3/10 RT:131, 135.) Mr. Cox cited studies that compared the greenhouse gas emissions

from using regasified LNG to the use of a domestic supply of natural gas. (Exh. 647 at 5-6 [citing Exh. 632; Exh. 619, *LNG Supply Chain Greenhouse Gas Emissions from the Cabrillo Deepwater Port: Natural Gas from Australia to California*; and Exh. 620, *Comparative Life Cycle Air Emissions of Coal, Domestic Natural Gas, LNG, and SNG for Electricity Generation*].) For example, Mr. Cox cites the San Diego Smart Energy 2020 report which found that:

> Approximately 50 percent of the natural gas sold by SDG&E is used in electric generation plants. The remaining 50 percent is used primarily by commercial and residential customers for space heating, water heating, and cooking and related uses. All of this consumption will convert to natural gas derived from imported LNG when flow is permanently reversed on the SDG&E pipeline system in 2009. . . .The lifecycle GHG emissions from natural gas fired power plants in SDG&E service territory, and those served by the Baja California natural gas pipeline system which is interconnected with the Costa Azul LNG terminal, will increase by approximately 25 percent in 2009.

(Exh. 632, Attachment C, at 99.)

The PMPD's argument that the LNG use will affect "*all* customers, including other power plants" does not relieve the Commission of its duty to study the increased emissions from the use of LNG at CECP. (PMPD GHG at 15 [original emphasis].) Moreover, the PMPD's reliance on Staff testimony, which argues that because CECP is more efficient than other power plants then its GHG emissions will be less than other plants, does not fulfill the CEQA duty to inform the public about the emissions stemming from the plant. (See *CBD v. NHTSA*, 538 F.3d at 1216 [finding that new efficiency standards only decrease the rate of emissions growth but do not result in a net reduction in total emissions].) The PMPD provides the gross direct GHG emissions from CECP for natural gas, but refuses to calculate the emissions that would be added by using regassified LNG. Staff's cited testimony also does not support the PMPD's conclusion that "the extent to which GHG emission rates will change" from the use of LNG "is speculative." (PMPD GHG at 15.)

In sum, the Project Description improperly fails to include the use of LNG and as a consequence fails to inform the public and decisionmakers about the potential increase in greenhouse gas emissions from the Project.

CONCLUSION

This licensing proceeding is situated at a key fork in the road for the California energy system. Does the Commission continue permitting new natural gas power plants that are not necessary for the future electric system and that lock in decades more of fossil fuel infrastructure while ostensibly misleading the public by approving an analysis that implicitly says that the current power plant licensing system is working to reduce greenhouse gases? Given this context, the Committee should deny or defer this permitting decision until the necessary analysis of the greenhouse gas emissions occurs and the Commission is able to determine whether this plant actually fits into an integrated plan for California's future. Although the Committee is faced with an important policy choice, the dictates of CEQA require the Commission to reject the inadequate greenhouse gas and alternatives analysis made in the PMPD. Furthermore, the environmental analysis needs to be redone because the Project Description fails to consider the use of LNG. The Commission should deny the permit or, alternatively, require that a new PMPD be completed with a legally defensible and factually accurate GHG analysis and No Project Alternative.

DATED: June 8th, 2011

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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 5/18/2011)

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DECLARATION OF SERVICE

I, Jessie Baird, declare that on June 8, 2011, I served and filed copies of the attached, CENTER FOR BIOLOGICAL DIVERSITY'S COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION and RESPONSE IN SUPPORT OF CITY OF CARLSBAD'S MOTION TO TAKE OFFICIAL NOTICE AND THE CENTER'S MOTION TO TAKE OFFICIAL NOTICE AND RE-OPEN THE EVIDENTIARY RECORD. The original of these documents, 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:

(*Check all that Apply*)

For service to all other parties:

X sent electronically to all email addresses on the Proof of Service list;

by personal delivery;

X by depositing in the United States mail at Oakland, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

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

OR

_____depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
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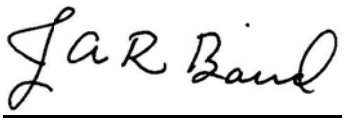
I declare under penalty of perjury that the foregoing is true and correct.



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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO: 07-AFC-6
CARLSBAD ENERGY CENTER PROJECT	)	CENTER FOR BIOLOGICAL DIVERSITY'S RESPONSE IN SUPPORT OF CITY OF CARLSBAD'S MOTION TO TAKE OFFICIAL NOTICE AND THE CENTER'S MOTION TO TAKE OFFICIAL NOTICE AND RE-OPEN THE EVIDENTIARY RECORD

I. INTRODUCTION

The Center for Biological Diversity ("Center") hereby files the following response in support of the City of Carlsbad and Carlsbad Redevelopment Agency's Motion to Take Official Notice ("Carlsbad Motion") pursuant to Cal. Code of Regs., tit. 20 Sec. 1716.5. The Center also makes a Motion to Take Official Notice for documents not currently included in the Evidentiary Record and a Motion to Reopen the Evidentiary Record for those documents not subject to Official Notice. All of these documents contain information that is relevant to the proceeding and address factual errors in the Presiding Member's Proposed Decision ("PMPD") and/or new information relevant to the PMPD. Alternatively, if the Commission denies the request for Official Notice, the Center moves to reopen the Evidentiary Record to include all of the documents discussed in this Response and Motion.

II. ARGUMENT

A. The Commission Should Grant the Carlsbad Motion.

The Carlsbad Motion requests Official Notice of the Application of SDG&E for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center, and Quail Brush Power. (Carlsbad Motion.) The Commission may take Official Notice of any generally accepted matter within its field of competence. (20 Cal. Code Reg. § 1213.) The Public Utilities Commission filings are within the field of competence of the Energy Commission, provide a basis for a No Project Alternative that was not discussed in the PMPD, and demonstrate that the PMPD relies upon a faulty No Project Alternative analysis. (See also Center for Biological Diversity's Comments on the PMPD ("Comments") Sec. I.C.3 & I.D.) Furthermore, SDG&E's Application sets forth new facts that will alter the PMPD's cumulative impacts analysis. (See also Comments at 17-18.)

B. Request to Take Official Notice

The following documents are within the competence of the Energy Commission because they relate to local reliability, the status of reliability-must-run contracts, solar pricing, renewable integration, and use of LNG at the Carlsbad Energy Center Project. Pursuant to California Code of Regulations, title 20, section 1213, the Center respectfully requests the Commission take Official Notice of the following matters:

Exhibit A: CPUC Final Report on the Audit of the Encina Power Plant, December 10, 2010.

Exhibit B: CAISO 2009 RMR/Black Start/Dual Fuel Contract Status

Exhibit C: CAISO 2008 RMR/Black Start/Dual Fuel Contract Status

Exhibit D: CAISO Letter to Mr. Randy Hickok re: RMR status terminated, October 15, 2010

Exhibit E: CAISO 2012 Local Capacity Technical Analysis, April 29, 2011

Exhibit F: SCE Submission of Contracts for Procurement of Renewable Energy Resulting from Renewables Standard Contracts Program, January 31, 2011

Exhibit G: San Diego County Air Pollution Control District Comments on the Air Resources Board May 19, 2010, Public Meeting on Revising the Compressed Natural Gas Fuel Specifications for Motor Vehicles, June 14, 2010.

Exhibit H: CEC West Coast LNG Projects and Proposals at 4, December 2010.

Exhibit I: CAISO Integration of Renewable Resources – 20% RPS, August 31, 2010.

Exhibit J: CAISO Summary of Preliminary Results of 33% Renewable Integration Study – 2010 CPUC LTPP Docket No. R.10-05-006, May 20, 2011.

Exhibit K: CEC News Release "Energy Commission Licenses Two East Bay Power Plants," May 18, 2011.

Exhibits A – D are relevant to the determinations to be made by this Commission because they show that the PMPD relies upon factual errors regarding the reliability must run ("RMR") status of plants in the San Diego area in support of its conclusion that the CECP is necessary in order to displace GHG emissions from these older, less-efficient plants within the electricity

system. These documents show that the RMR contract of the Encina plant was released at the end of 2007 and that the RMR contract for South Bay was released at the end of 2010, proving that, in fact, the CECP is not necessary to allow the release of these RMR contracts. (See also Comments Sec. I.C.1.)

Exhibits D and E are also relevant to the determinations to be made by this Commission because they illustrate how the electric system and the assumptions based upon it have changed since the application for CECP was first reviewed and, together with the SDG&E Testimony submitted by the City of Carlsbad, undermine the PMPD's argument that the CECP is needed for local reliability and to allow full retirement of the South Bay and Encina power plants. These documents explain that consumption and generation needs have changed in the San Diego region, that South Bay has already been retired, and that with contracts from expected new generation (which do not include CECP), there will be enough capacity to meet San Diego's local reliability needs and to allow full retirement of the Encina plant prior to the 2017 deadline for compliance with new once-through cooling regulations. (See also Comments Sec. I.C.2.)

Exhibit F is relevant to the determinations to be made by this Commission because in the proposed decision the PMPD concludes that "alternative technologies are not capable of meeting the project objectives" (PMPD Alternatives at 18) and dismisses the most promising of these alternatives – rooftop solar PV, which the PMPD admits is technically capable of providing all of San Diego's peak energy needs – as being too expensive to compete with a project like CECP. (*Id.* at 14-15.) However, Exhibit F shows that, contrary to these claims, utility-scale rooftop solar projects are cost effective and one southern California utility is entering into contracts for 250MW worth of rooftop PV for less than the cost of a facility like CECP. (See also Comments Sec. I.C.6.)

Exhibits G and H are relevant to the determinations to be made by this Commission in that they show that LNG use in the San Diego region is not, as the PMPD asserts, speculative. (PMPD GHG at 15.) LNG use in San Diego has been occurring for some time and is likely to ramp up significantly (to near 100 percent) in light of recent actions by the California Air Resources Board. This reasonably foreseeable scenario must be analyzed as part of the environmental review. (See also Comments Sec. I.C.5.)

Exhibits I and J are relevant to the determinations to be made by this Commission because they undermine the PMPD's main argument that the CECP is necessary for the integration of renewables. These documents show that, in fact, the California ISO has determined that the existing fleet provides sufficient operational flexibility to reliably integrate renewables for the 20 percent RPS goal and will likely be sufficient to meet the 33 percent RPS goal as well. These documents counter the assertions made in the PMPD that more gas-fired generation is needed as more renewables are added to California's electricity system. (See also Comments Sec. I.C.4.)

Exhibit K is relevant to the determinations to be made by this Commission because it identifies two newly approved power plants that were not considered in the cumulative impacts analysis in the PMPD. (See also Comments at 18.)

C. Alternatively, the Commission Should Reopen the Administrative Record to Include All Documents Discussed in Sections A and B.

By taking Official Notice of Exhibits A – K, those documents become part of the Evidentiary Record. As discussed above, each of the documents contains information that shows that the PMPD rests parts of its analysis on factual errors. Alternatively, if the Commission does not take Official Notice of all or some of Exhibits A – K and grant the Carlsbad Motion, the Commission should grant the motion to reopen the evidentiary record and allow the inclusion of

this information in order to have a final decision that is predicated on accurate statements that inform the public and decision makers about the environmental effects of the project. (See Cal. Public Resources Code § 21000 et. seq.)

The Center also moves to reopen the administrative record to include:

Exhibit L: January 6, 2011 Unified Port of San Diego article "South Bay Power Plant Ceases Operations."

Exhibit M: May 20, 2011 Unified Port of San Diego article "Update on South Bay Power Plant Removal."

Exhibit N: February 1, 2011 Clean Technica article "SCE Buys 20 Years of Solar Power for Less than Natural Gas"

Exhibit O: February 8, 2011 Renewable Energy World article "Solar PV Becoming Cheaper than Gas in California."

Exhibit P: San Diego Union Tribune article "Gas from afar pollutes here, critics say"

Exhibit Q: "Mexico's Costa Azul re-exports first LNG cargo," Platts, January 10, 2011.

Facts in each of these articles undermine the veracity of certain statements or findings in the PMPD. Facts in Exhibits L and M are relevant to the determinations to be made by this Commission because they further undermine the PMPD's conclusion that the CECP was needed for the retirement of the South Bay power plant, which has already been shut down. (See also Comments Sec. I.C.2.) Exhibits N and O are relevant to the determinations to be made by this Commission because they highlight the cost-effectiveness of rooftop solar PV in stories regarding SCE's new 250MW-worth of rooftop solar contracts for below market price referent. (See also Comments Sec. I.C.6.) Exhibits P and Q are relevant to the determinations to be made by this Commission as they further illustrate that LNG use in San Diego is not speculative. (See also Comments Sec. I.C.5.)

Due process requires that the Commission consider the information in Exhibits A-Q and in the Carlsbad Motion documents. (See Cal. Code of Regs., tit. 20 § 1754(b) [(the commission shall consider additional evidence at the hearing if "due process requires"].) Factual errors in the decision also require consideration of this information. (See Cal. Code of Regs., tit. 20 § 1720 [a petition for reconsideration can set forth "an error in fact"].)

III. CONCLUSION

For the foregoing reasons, the Center respectfully requests that the Commission grant this motion and include all the documents discussed in the Response and Motion in the proceeding's evidentiary record.

DATED: June 8, 2011

_____

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