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June 28, 2011

DOCKET
07-AFC-6
DATE JUN 28 2011
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California Energy Commission
1516 9th Street
MS #4 07-AFC-6
Sacramento, CA 95814

Presiding Member's Preliminary Decision Errata Comments
Re: Docket Number: 07-AFC-06

Power of Vision (POV) thanks the California Energy Commission for the continuance to June 30, 2011 and the opportunity to comment on the Presiding Member's Preliminary Decision (PMPD) Errata issued on June 14, 2011. As the record already contains volumes of evidence presented over the course of several years, POV will be brief.

Project Alternatives # 5, which states (as corrected): No alternative, including the "no project" alternative would avoid or substantially lessen potentially significant environmental impacts since no significant unmitigable impacts have been established. While the proposed plant has mitigation requirements, it will still increase air pollution[1], use 3 mpd of ocean water and create a visual blight in Carlsbad. How is this superior to a no project alternative especially when considering its coastal location? CEC speculates that CECP is environmentally superior to no-alternative because other sites in San Diego County, that might be green fields, could be developed and "likely to give rise to greater levels of environmental impact than the construction of CECP as proposed on the EPS site. If system-wide environmental concerns are reasons to consider CECP as environmentally superior then other sites system-wide should have been considered as alternatives rather than sites specifically located in Carlsbad.

Worker Safety/fire Protection #26. CEC continues to maintain that a 28-foot access road at the bottom of the pit is adequate. This is in conflict with the Carlsbad Fire Chief Kevin Crawford's requirement for a 50 foot road at the bottom of the pit. Extensive testimony was given February 4, 2010 at the Evidentiary Hearings[2], submitted written testimony[3]and again at the PMPD Evidentiary Hearing on May 19 as to why the 50-foot access road is necessary. It appears CEC staff believes the Carlsbad Fire Chief and Fire Marshall, with 49 years of combined service, are not capable of determining the fire safety requirements for the proposed facility but instead offer their own limited expertise as a substitute.[4] This is in direct conflict of accepted

[1] Ex. 222, p 4.1-27
[2] February 4, 2010 Evidentiary hearing transcripts pps 72-74
[3] Exhibit #150 Weigand-2-3
[4] PMPD errata p. 16 "we believe the role of 'fire code official' falls to us…"

practices of the CEC in other power plant siting cases and even the CECP FSA. POV respectfully asks the commissioners to point to the body of law that allows the CEC to act as Fire Chief for the City of Carlsbad as this contradicts the California Fire code.[5]

Land Use #46. POV continues to assert the applicant violates the PU zone, as they are a publicly traded merchant utility company. The Carlsbad General Plan, page 20 under Land Use Elements states:

> This category of land use designates areas, both existing and proposed, either being used or which may be considered for use for **public or quasi-public functions**. Primary functions include such things as the generation of electrical energy, treatment of waste water, public agency maintenance storage and operating facilities, or other primary utility functions designed to **serve all or a substantial portion of the community."** [6]

CECP's parent company NRG does not fit the definition of a public utility nor will the power produced at this plant serve any part of the population of Carlsbad or San Diego County.[7]

Land Use #46. CEC continues to assert the applicant is not required to submit an updated Precise Development Plan. They contend such a plan is the "functional equivalent to a conditional use permit."[8] While staff may contend such, it is clearly a requirement of the PU zone[9] as well as the General Plan[10] and thus an over-ride must be made if they applicant is not required to submit an updated PDP.

Land Use #48. If the Committee was not convinced the project provided an "extraordinary level" of public benefit why was an over-ride not required in the PMPD?

Land Use #48. It is speculative on the CEC's part to assume the aging Encina Plant will be abandoned and continue to remain on the site indefinitely. Clearly, current levels of operation at EPS dictate it's in its last year's of service

Land use #49….

5. Testimony by Carlsbad City Planner Scott Donnell [11] details the various ways CECP violates the General Plan
6. See above comments in relation to SP144 requirements
7. The Agua Hedionda Land Use Plan, of which the CECP is subject to,
8. has a specific height requirement of 35 feet[12]. The HRSG will be 88' and the stacks will rise to 139'. This is clearly a violation that requires an over-ride.
9. The CECP in and of itself does not rise to the level of "Extraordinary public purpose" as required by the South Carlsbad Coastal Redevelopment Area. Again, the CEC

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[5] The California Fire Code Section 503.2.2 states "The *fire code official* shall have the authority to require an increase in the minimum access widths where they are inadequate for fire or rescue operations."
[6] Carlsbad General Plan, page 20
[7] San Diego Gas & Electric's application to the PUC to enter into purchase power agreements. CEC has taken official notice.
[8] PMPD Errata, p. 29, footnote 3
[9] CMC 21.26.040
[10] Carlsbad General Plan page 20
[11] Exhibit #150, Donnell-9-14
[12] Agua Hedionda land Use Plan, Land Use section 1.9, page 17. Exhibit #412

assumes a benefit that is not in evidence by imposing conditions LAND 2 and LAND 3. There is no date-certain attached the proposal. The citizens of Carlsbad are still left with a speculative offer by the applicant to remove EPS and remediate the property. An offer of a "plan" does not meet the criteria of SCCRA.

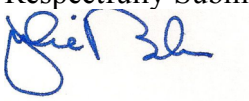
12. In other words, if EPS is removed, CECP imparts no cumulative impacts? Should CECP be then required to comply with the Coastal Act as a new stand-alone project?

We understand the CEC is charged with locating power plants. However, your own regulations dictate that you must consider local plans. [13] Just because CEC staff believes Carlsbad has complicated land use documents is not a valid reason to ignore those documents and the required process. The Carlsbad process has been created to protect the community from unsightly and inappropriate development. Many complicated projects (i.e., Legoland California, Hilton Hotel, etc) have successfully navigated Carlsbad land use rules and have been built. The land use protections the PMPD Errata reiterated completely ignores LORS.

All of these topics have been exhaustively covered in the many, many docketed filings and presented at the February 2010 Evidentiary Hearing and again during the May Evidentiary Hearings. And, yet we find the CEC is ignoring City of Carlsbad LORS, CEQA and California Coastal Commission requirements. At the very least, over-rides must be made to take into account the inconsistencies of CECP with Carlsbad's General Plan, Zoning and other pertinent land use documents. Inconvenient local rules do not make it allowable for the Commission to simply ignore their existence.

On behalf of the citizens of Carlsbad, Power of Vision respectfully asks the Committee to over rule the Presiding Member's Preliminary Decision and deny the license for CECP. The proposed plant is incompatible on the beach. The Committee has the opportunity to restore 95 acres of beachfront property to a use more conducive to recreation and oceanfront development. It is no longer necessary to locate power plants on the beach and its time to completely remove this industrial use from the shores of our great state. As it states in the Coastal Act of 1976, "That the permanent protection of the State's natural and scenic resources is paramount concern to present and future residents of the State and nation;"

Respectfully Submitted,



Arnold Roe, PhD
Julie Baker
Power of Vision

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[13] **§ 25003. Legislative finding; consideration of state, regional and local plans**
The Legislature further finds and declares that in planning for future electrical generating and related transmission facilities state, regional, and local plans for land use, urban expansion, transportation systems, environmental protection, and economic development should be considered

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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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)

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DECLARATION OF SERVICE

I, Julie Baker, declare that on June 28, 2011, I served and filed copies of the attached Power of Vision Comments on the Presiding Members preliminary Decision errata, dated June 28, 2011. The original document 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:

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

by personal delivery;

by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

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

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Julie Baker

*indicates change