

**DOCKET**

**07-AFC-6**

DATE MAR 30 2011

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**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

**In the Matter of:**

**The Application for Certification for the  
CARLSBAD ENERGY CENTER  
PROJECT**

**Docket No. 07-AFC-6**

**APPLICANT'S RESPONSE TO POWER OF VISION'S MOTION TO REOPEN  
PROCEEDING AND ACCEPT TESTIMONY AND EXHIBITS**

March 30, 2011

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**I. INTRODUCTION**

On March 25, 2011, more than one year after the close of the evidentiary hearing (“Evidentiary Hearing”) and the evidentiary record in the Carlsbad Energy Center Project (“CECP”) siting proceeding, Intervenor Power of Vision (“POV”) filed a Motion to Reopen [the CECP] Proceeding and Accept Testimony and Exhibits (“Motion”). POV notes in the Motion that it “concur[s] with the City of Carlsbad and Carlsbad Redevelopment Agency’s [(collectively “City”)] motion of March 14, 2011 to reopen proceeding and accept testimony and exhibits.” (Motion at 1.) In addition, POV also requests that the proceedings be reopened “regarding the design adequacy of the CECP in regards to earthquakes and tsunamis,” an issue not raised in the City’s March 14, 2011 motion. To that end, Carlsbad Energy Center LLC (“Applicant”) submits its opposition herein to POV’s Motion and also incorporates herein by reference its March 28, 2011 Opposition to the City’s Motion.

As has been set forth in Applicant’s previous filings related to this issue, the Committee should only reopen the evidentiary record to admit evidence that is demonstrably relevant to the

proceeding and with good cause shown as to why such evidence was not presented during the Evidentiary Hearing held February 1 through February 4, 2010. Here, POV fails to demonstrate good cause or that the “evidence” the City seeks to admit is discernibly relevant evidence that would be different from that presented during the Evidentiary Hearing or in any post-hearing brief. To that end, the Committee should rightfully deny POV’s Motion.

## II. ARGUMENT

Applicant does not deny that the Energy Commission regulations on power plant site certification provide that “[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs.” (20 Cal. Code Regs., § 1212(a).) Further, Applicant agrees that each party to a siting proceeding has the right to submit testimony and other evidence, subject to the exercise of the lawful discretion of the presiding committee member. (20 Cal. Code Regs., § 1712(b).) Moreover, Applicant recognizes that the Committee may take official notice of “any generally accepted matter within the commission’s field of competence, and of any fact which may be judicially noticed by the courts of this state.” (20 Cal. Code Regs., § 1213.) However, at this late stage of the siting process, only the most critical evidence, that which could not have been produced or which was improperly excluded at the Hearing or substantive data based on evidentiary facts not known at the time of the Hearing, should be considered. Otherwise, the siting process will continue to linger indefinitely without resolution or a final decision.

POV argues that in light of the recent earthquake in Japan, the CECP record should be reopened to consider additional testimony and evidence “regarding the design adequacy of the CECP in regards to earthquakes and tsunamis.” (Motion at 1.) Specifically, POV contends that “CECP’s design criteria for earthquakes are based on old analysis that were conducted prior to the advent of three-dimensional seismic reflection mapping and, as highlighted in the

Commission's AB 1632 Report of November 2008, may have underestimated the potential earthquake and tsunami hazards." (*Id.*)<sup>1</sup> POV's Motion should be denied.

First, Applicant notes that AB 1632 is not specifically applicable to CECP as AB 1632 required the Energy Resources Conservation and Development Commission ("Commission") to evaluate the San Onofre Nuclear Generating Station and the Diablo Canyon Power Plant with respect to Building Code and seismic design standards in light of an earthquake and/or tsunami. Notwithstanding the lack of applicability of AB 1632 to the CEC's proceedings for CECP, CECP's analysis of seismic activity and tsunami in the AFC and the CECP evidentiary record is based on the Uniform Building Code and seismic design standards based on the standard design for natural gas-fired electric generation requirements. This level of analysis is sufficient for the CEC's licensing process.

Second, specific Conditions of Certification ("COCs") are included in the CECP Final Staff Assessment ("FSA") and are expected in the CEC's Final Decision for CECP that will require detailed engineering and design for CECP based on the most current Uniform Building Code and seismic design standards. Moreover, the final engineering design for CECP shall be reviewed and approved by the Chief Building Official ("CBO") assigned to CECP. This detailed engineering and design process and the CBO's review and approval requirement shall ensure that the current Uniform Building Code and seismic design standards are achieved for CECP and that the project can withstand the design seismic event and tsunami event for the site.

Therefore, no additional analysis is required at this time, and there is no reason or requirement that the CECP proceedings be reopened for additional testimony and/or exhibits on this topic. For the reasons set forth herein and in Applicant's March 28, 2011 Opposition, the

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<sup>1</sup> The report is entitled "Commission Report: An Assessment of California's Nuclear Power Plants: AB 1632 Report." November 2008.

Committee must opine that the CECP evidentiary record remain closed.

### III. CONCLUSION

The Committee should maintain the finality of certainty of the evidentiary record in order to avoid endless motions and petitions seeking to admit irrelevant information. Accordingly, POV's Motion should be DENIED.

Date: March 30, 2011

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APPLICATION FOR CERTIFICATION  
FOR THE CARLSBAD ENERGY  
CENTER PROJECT

Docket No. 07-AFC-6  
PROOF OF SERVICE  
(Revised 1/24/2011)

Carlsbad Energy Center LLC's  
Applicant's Response to Power of Vision's Motion to Reopen  
Proceeding and Accept Testimony and Exhibits

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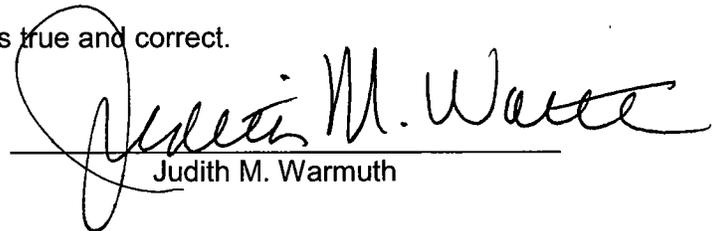
### **DECLARATION OF SERVICE**

I, Judith M. Warmuth, declare that on March 30, 2011, I deposited copies of the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, Sacramento, California 95814, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

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

  
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Judith M. Warmuth