DOCKET
07-AFC-6
DATE May 11 2011
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STATE OF CALIFORNIA

Energy Resources Conservation and
Development Commission

In the Matter of: Application for Certification for the Carlsbad Energy Center Project (CECP)	)))))	Docket No 07-AFC-6

May 11, 2011

City of Carlsbad and Carlsbad Redevelopment Agency
Motion to Enlarge Response Time and/or Continue Final Full Commission Hearing Date to a Reasonable Time

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STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

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1. Introduction

On the evening of May 9, 2011 the Presiding Member issued a Proposed Decision and a notice of a Committee Conference and a full Commission Hearing. Intervenors City of Carlsbad and the Carlsbad Redevelopment Agency believe that the schedule presented by this Committee is unworkable and fails to give the parties adequate time to address the many issues and new evidence presented. After almost 3 ½ years of proceeding a 15 month delay following the Evidentiary Hearings, the Committee has embarked on a 37 day "rush to judgment" for no apparent reason. Interveners respectfully request that the Assigned Committee extend the remainder of the schedule on this matter to give all parties and the public a reasonable time to address issues requested by the Committee, and to adequately address comments on the proposed decision. Allowing an additional month in the schedule would allow this. There is no stated need for a "rush to judgment" and interveners' position is that to deny this reasonable request would compromise the due process so far extended throughout these proceedings.

2. Procedural History

CECP filed its Application for Certification (AFC) on September 14, 2007 which was determined to be data adequate on October 31, 2007. Hearings followed on February 1, 2, 3, and 4, 2010, and the PMPD was filed by the Assigned Committee on May 9, 2011, over 15

months following the close of the record. The notice calls for additional hearings to be held on May 19 and 20, a mere 10 days following release of an almost 400 page draft decision. The notice also requests that the parties file comments on or before that date. By law, comments are due to be filed by June 8, 2011. Finally, the Committee scheduled a full Commission hearing to consider this application on June 15, 2011 – one week after comments are due.

3. The Task Before the City. Had the PMPD adequately dealt with the issues specifically raised by the City and the Redevelopment Agency, these extremely shortened time periods may have been be acceptable. In this case, however, the Committee, in its PMPD, ignored the testimony and evidence provided by experts, disregarded suggested conditions of certification and failed to either adopt or override applicable laws, ordinances, rules and regulations (LORS).

One example of the Committee's oversight is the Worker Safety section of the PMPD. This section correctly references the California Fire Code sections on road width requirements. Although it refers to section 503.2.1 which specifies 20 foot road widths, the Committee ignores the legal foundation supporting the testimony of the Carlsbad Fire Chief, concerning section 503.2.2 which gives the Fire Chief the authority to **require** greater roadway widths where, in the judgment of the fire chief, greater road widths are warranted. It is noteworthy that the Fire Code was changed in 2007, reducing the prescribed minimum roadways from 28 feet to 20 feet, but adding a section (503.2.2) giving fire chiefs the legal authority to require greater widths. Staff and Applicant gave scant help to the Committee in interpreting this LORS, not mentioning it at all in their briefs.

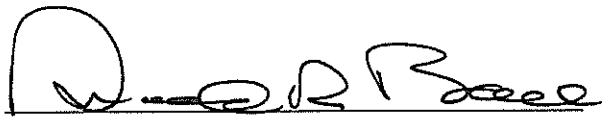
The failure of the Committee to address a key LORS – the Fire Code – places a greater burden on the City and the Carlsbad Redevelopment Agency. We must again make our case, seeking either Commission recognition of the applicable code section, or Commission overriding the fire chief in the interests of the state of California. We must also present testimony on a fire at a nearby facility owned and operated by others. Staff relied heavily on the configuration of this facility, apparently believing it is instructive in determining road widths for the CECP. Following close of the record, a fire occurred at this facility, and burned for more than 24 hours. The Committee invited the parties to submit testimony and recommendations on "lessons learned from the Kleen Energy & Palomar power plant fires." Neither these power plants, nor the jurisdiction in which they reside, are parties to this proceeding. Ten days to gather meaningful

data, make recommendations and to subpoena necessary witnesses is insufficient time to address this important issue.

4. The Task Before The Commission. The Commission is also tasked to deal with an enormous amount of work in an extremely abbreviated time. There is only one Commissioner now that is fully aware of this complicated proceeding. The one-person committee and other three Commissioners will also have only one week to digest all of the comments, the transcripts of the evidentiary hearings, as well as the Proposed Decision and documents in this case. One reason this Proposed Decision was delayed was because of the extreme workload before the Commission in reviewing an unprecedented number of renewable energy projects facing a federal deadline. If that extraordinary workload prevented the Committee assigned to this project from preparing its Proposed Decision, it is more likely to have precluded the Commissioners not assigned to this case from reading the extensive material submitted into the record and preparing to make a decision on such a complicated and important project. The Commissioners and full Commission will surely benefit from a reasonable extension of the time for a full Commission Hearing and final decision.

5. City of Carlsbad and Carlsbad Redevelopment Agency Request. This 3 ½ year proceeding can be expeditiously processed, and the rights of the parties will not be compromised, by allowing additional time for the hearing and new evidence (we suggest a date in early June), and additional time to consider the comments, (we suggest a date in early July).

Respectfully Submitted:



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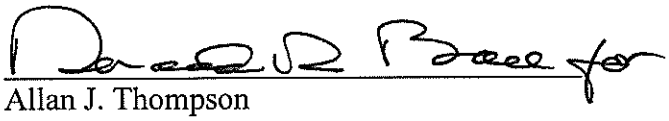

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1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE *CARLSBAD ENERGY CENTER PROJECT*

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

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*indicates change

DECLARATION OF SERVICE

I, Robin Nuschy, declare that on 5.11, 2011, I served and filed copies of the attached Motion, dated 5.11, 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:

✓ 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.

Robin Nuschy

*indicates change