



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION FOR THE
CARLSBAD ENERGY CENTER PROJECT

DOCKET No. 07-AFC-6

DOCKET

07-AFC-6

**RULINGS ON MOTION TO POSTPONE EVIDENTIARY HEARING
AND REQUEST TO TAKE OFFICIAL NOTICE
AND REVISED COMMITTEE SCHEDULING ORDER**

DATE Nov. 09 2011

RECD. Nov. 09 2011

On June 30, 2011, the full Energy Commission referred the Presiding Member's Proposed Decision, (PMPD) and Errata in this proceeding back to the Carlsbad Energy Center Project (CECP) Siting Committee for further hearings regarding several topics. The relevant portion of that Order is as follows:

"On June 29, 2011, the Center for Biological Diversity filed a New Motion for Evidentiary Hearing regarding greenhouse gas issues, cumulative impacts and alternatives analysis including all issues related to SDG&E's application for approval of Power Purchase Agreements with three power plant projects. We GRANT the motion with respect to evaluation of the impact of the three new projects on our cumulative impacts and alternatives analysis. In addition, we REMAND the matter to the Carlsbad AFC Committee to take evidence and revise the PMPD as needed on those issues and in addition 1) issues associated with Conditions Land-2 and Land-3 and their environmental impacts, and 2) the grid reliability issues raised by the comments from CAISO [California Independent System Operator] during the June 30, 2011, Business Meeting. The Committee may, in its discretion, consider other issues, with or without additional hearings."

On August 12, 2011, after reviewing a Status Report from Energy Commission Staff and other parties' responses thereto, the Committee issued a Revised Committee Scheduling Order. That Order called for a Prehearing Conference on September 13, 2011 and an Evidentiary Hearing on September 19, 2011. In its comments on the Staff's Status Report, the Center for Biological Diversity suggested that the hearing be postponed until a Prevention of Significant Deterioration (PSD) permit is issued by the United States Environmental Protection Agency and the San Diego Air Pollution Control District revisits and perhaps revises its Determination of Compliance for this project.

We directed the parties to discuss whether such delays are necessary in their testimony and be prepared to address the issue during the Evidentiary Hearing. On August 22, 2011, the Applicant joined in CBD's request to postpone the Evidentiary Hearing. We converted the September 13, 2011, Prehearing Conference into a Committee Conference to discuss the status of the case and the schedule going forward.

During the Committee Conference, the Applicant indicated that, upon further review of the PMPD, it desired to proceed to hearings, provided that the Committee first agreed to delete Conditions of Certification Land-2 and Land-3 from the proposed decision. Those conditions provide for planning, permitting, and financing of the eventual removal of the existing Encina power plant. The merits of retaining or deleting the conditions were discussed during the Committee Conference. Because the Committee and parties first learned of the Applicant's request during the Committee Conference, we granted additional time for the parties to file written comments and argument about the request.

In addition, on October 18, 2011, Intervenor City of Carlsbad and Carlsbad Redevelopment Agency, requested that official notice be taken of Resolution 2011-230 (amending the text of the General Plan Public Utility land use designation) and Ordinance CS-158 (amending the list of authorized uses in the Public Utility zone). The Applicant filed timely objections to the request.

Summary

1. We are not inclined to remove Conditions Land-2 and Land-3 at this time. We are open to modifying them, if possible, to place the costs of removal and redevelopment of the existing Encina site on the redevelopment project rather than the CECP.
2. Action on this Application for Certification can proceed in the absence of preliminary or final federal PSD permits.
3. It is appropriate to take official notice of the recent City amendments to its General Plan and zoning ordinance.

Discussion

A final Committee decision about whether to retain Conditions Land-2 and Land-3 is premature at this time. Based on the evidence, argument and comments to date, we are not inclined to eliminate them. The sooner that the Encina plant can be removed and redeveloped, the better. Facilitating that process via the proposed conditions provides a public benefit, as we discussed in the PMPD and Errata. We are, however, willing to consider suggestions for modifications which will address the Applicant's concern that the costs of demolition will be bourn by CECP and purchasers of its generation and not by the subsequent redevelopment project(s) which benefit from Encina's removal. This may be a matter of adjusting deadlines, the City participating in providing, via loan or other means, the capital for removal, or some other approach. We

invite the parties to come to the Evidentiary Hearing with their thoughts. An additional hearing topic is added to accommodate that discussion.

It is not necessary to wait for further federal agency action on a PSD permit for the project. While Public Resources Code §25523(d)(1) requires findings regarding compliance with federal standards, it does not require that we wait for a final decision from federal authorities. The project will not be able to operate until a permit is issued; the permit's conditions will be enforced by federal authorities. To address the required findings, we require additional evidence. The parties are encouraged to submit evidence and argument on the project's ability to comply with federal PSD requirements and the likely operating conditions of that permit. To the extent that such evidence is unavailable or speculative, explain why.

We do not believe that the Energy Commission can ignore the recent General Plan and zoning amendments adopted by the City. No law has been cited that freezes local standards applicable to projects that we review at some prior point in time. The documents which the City has offered are potentially relevant and worthy of consideration in this proceeding. As submitted, however, they are incomplete in that they omit critical information. For example, both the Resolution and Ordinance incorporate findings made by the Planning Commission but those findings are not included. Our taking of official notice is conditioned, therefore, on the City's providing complete copies of the documents and relevant background materials.

At several points in this proceeding, most recently during the June 30, 2011, Energy Commission Business Meeting, it was argued that the Commission must override various environmental and LORS compliance issues in order to approve this project. The parties have been previously provided with the opportunity to give evidence on the efficacy of overrides. As the issue is raised again in the context of the recent City amendments and perhaps by the upcoming testimony of the CAISO, we will reopen that topic for the presentation of new evidence that has not already been presented and which is not cumulative.

Our schedule is revised to allow Commission Staff to file additional opening testimony on these additional issues - Conditions Land-2 and Land-3, the PSD permit, the recent City General Plan and zoning amendments, and overrides - at the same time the Applicant files its opening testimony. Other parties will then file their opening testimony and all parties will follow with rebuttal testimony.

Evidentiary Hearing Topics

The topics on which evidence and argument will be accepted at the Evidentiary Hearing are:

1. The impact of the three new PPA projects on our cumulative impacts and alternatives analysis;

2. Conditions Land-2 and Land-3, their environmental impacts and appropriate modifications to address the financial concerns raised by the Applicant;
3. Grid reliability issues raised by the comments from CAISO during the June 30, 2011, Energy Commission Business Meeting;
4. The federal PSD permit that the project will require in order to operate.
5. Recent City land use LORS amendments contained in Resolution 2011-230 and Ordinance CS-158; and
6. Additional evidence, not previously presented, regarding whether it is appropriate to override either unmitigated environmental impacts or noncompliance with state or local LORS.

We do not find it necessary to revisit fire safety issues as the City of Carlsbad has requested. Ample testimony has been taken on that topic.

The attached schedule does not contemplate the filing of additional briefs following the Evidentiary Hearing. Should it become necessary for briefs, the parties are hereby cautioned that they may be due within as soon as ten (10) days following the Evidentiary Hearing.

The Committee may further modify the schedule at any time upon either its own motion or that of a party. (Cal. Code Regs., tit. 20, § 1709.7(c).)

We also take this opportunity to remind the parties of our general expectations regarding the exchange of evidence. The presentation of previously undisclosed evidence during the hearings is disruptive to the process and will be avoided wherever feasible. The attached schedule contains milestones for the filing of both opening and rebuttal testimony. Evidence not identified and shared during that process will not be admitted unless a showing of good cause is made.

Dated November 9, 2011, at Sacramento, California.



JAMES D. BOYD
Vice Chair and Presiding Member
Carlsbad AFC Committee



KAREN DOUGLAS
Commissioner and Associate Member
Carlsbad AFC Committee

**REVISED COMMITTEE SCHEDULE
FOR THE
CARLSBAD ENERGY CENTER PROJECT
(07-AFC-6)**

DATE	EVENT
November 18, 2011	Staff files additional supplemental testimony, if any, on the Evidentiary Hearing topics not previously identified in the August 10, 2011 Revised Committee Scheduling Order
November 18, 2011	Applicant files responsive testimony and exhibits, witness lists and time estimates
December 1, 2011, 3:00 p.m.	Other parties file responsive testimony and exhibits, witness lists and time estimates
December 7, 2011, 12:00 Noon	All parties file rebuttal testimony and (if necessary) revised witness lists and time estimates
December 9, 2011, 10 am – 12:00 Noon	Prehearing Conference (Sacramento, with telephonic participation encouraged)
December 12, 2011	Evidentiary Hearing (in Carlsbad vicinity)
4 – 5 weeks after Evidentiary Hearing	Revised Presiding Member's Proposed Decision (RPMPD) issued for 30 day comment period
Tbd (near the end of RPMPD comment period)	RPMPD Comment Committee Conference
30 days after RPMPD issued	RPMPD Comment period ends
1 – 2 weeks after RPMPD comment period ends	Revised RPMPD issued* for 15 day review period*
Tbd (shortly after RPMPD or Revised RPMPD comment period ends)	Energy Commission Decision Adoption Hearing

Tbd = to be determined; * if necessary.

November 9, 2011



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CENTER PROJECT**

**Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 10/24/2011)**

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DECLARATION OF SERVICE

I, Maggie Read, declare that on, November 9, 2011, I served and filed copies of the attached Rulings on Motion to Postpone Evidentiary Hearing and Request to Take Official Notice and Revised Committee Scheduling Order, dated November 9, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [[www.energy.ca.gov/sitingcases/carlsbad/ index.html](http://www.energy.ca.gov/sitingcases/carlsbad/index.html)].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. 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 "e-mail service preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

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

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
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I declare under penalty of perjury under the laws of the State of California 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.

Original signed by: _____
Maggie Read
Hearing Adviser's Office