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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

In the Matter of:

Application for Certification for the Carlsbad Energy Center Project

Docket No. 07-AFC-6

Energy Commission Staff Comments on Issues Raised At the September 13, 2011, Committee Conference

I. Introduction

At the September 13, 2011, Carlsbad Committee Conference, representatives of Carlsbad Energy Center, LLC (Applicant) expressed a desire to resume the AFC licensing process for the Carlsbad Energy Center Project (CECP). However, Applicant insisted that the project is not viable with two proposed conditions in the Presiding Members Proposed Decision (PMPD)—**LAND-2** and **LAND-3**—and requested that they be deleted from the PMPD. Applicant stated that without the removal of these conditions, they could not support continuation of the CECP licensing process due to significant financial ramifications associated with their implementation.

Applicant's request for the deletion of these Land Use conditions in order for the project to go forward presents the Carlsbad Committee with a conundrum. It cannot indicate whether it will propose to remove the two conditions without issuing a Revised PMPD. However, if it is to issue a Revised PMPD, it first needs to complete the evidentiary hearings so that it can revise its decision to reflect the additional analysis that it has requested by its Committee Order.

II. The Committee Should Complete the Evidentiary Hearings, Then Issue a Revised PMPD.

The Committee needs to finish the evidentiary hearing process. The final hearing is on discreet topics for which the underlying analysis has been filed by Staff.[1] Predictably, intervenors such as the City of Carlsbad (City) will want to file comments or testimony regarding the Staff analysis of construction impacts and the San Diego Gas and Electric "PPA Alternatives." The schedule for such comments or testimony should be quickly

[1] Energy Commission Staff Supplemental Testimony, filed and docketed on August 12, 2011, (tn: 61840): http://www.energy.ca.gov/sitingcases/carlsbad/documents/2011-08-12_Staff_Supplemental_Testimony_TN-61840.pdf

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set. The issues are specific, and the response time should be correspondingly short. The Committee needs to avoid any further "analysis creep" that would further delay the proceeding, which has now exceeded four years in length.

The final evidentiary hearing should be promptly scheduled, and it should not be allowed to take more than one day. The Revised PMPD can address the issues presented by the Land Use conditions, and make the final embellishments regarding the PPA alternatives. Completing evidentiary hearings, then issuing a Revised PMPD addressing the Land Use conditions, is the only apparent way forward. Staff believes that Applicant and the intervenors should file testimony on ten days notice from the Committee on the very narrow issues addressed by the Staff analysis. A final evidentiary hearing should then be set approximately two weeks following that filing.

III. The Revised PMPD Should Address the Question of Whether LAND-1 and LAND-2 Will Continue to be Proposed Requirements.

The two Land Use conditions regarding closure of the existing facilities are not CEQA mitigation, and were never proposed by Staff or any other party. Rather, they were added to the Proposed Decision by the City and Applicant after bilateral negotiation. These negotiations were prompted by the somewhat ambiguous statement in the original PMPD that, while the project seemingly offered important public benefits[2] enumerated by Staff, it would be better still if it provided some future assurance to the City and its residents regarding the removal of existing infrastructure when EPS Units 1 through 5 are finally closed, whenever that may occur.

Applicant now states that when it negotiated the Land Use provisions for project closure, that the conditions were premised on the City cooperatively providing for redevelopment plans that would assure Applicant's compensation for demolition, presumably by developers of the redeveloped EPS site west of the railroad tracks. Applicant now states that such a cooperative process was subsequently withdrawn by the City, thus imposing the full cost of demolition on the Applicant, with no funding or cost-recuperation source for demolition. Accordingly, it states that the project is not viable with the Land Use conditions, and therefore requests their removal.

Intervenors may argue that the closure conditions are necessary for the project to meet the requirement of an "extraordinary public benefit." Staff believes that the project offers such benefit without the closure plan. Extraordinary public benefits have been the subject of much testimony and discussion at hearing, and include critical local reliability benefits to the electric system, important benefits to ocean biota by greatly reducing once-through cooling, and additional collateral benefits.

This issue has already been fully joined in the evidentiary hearing process, and should not be the subject of further evidentiary hearings. Rather, the Committee should now decide whether the extraordinary public benefit criterion is met without the Land Use conditions. If it decides that this criterion is not met, and that there is a resulting

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[2] The City has argued that the project must provide an "extraordinary public benefit" because that criterion arguably is required by a City provision in its redevelopment plant for the area.

noncompliance with a local ordinance, then the Commission should next decide whether the project's general benefits merit an "override" of this nonconformity pursuant to Public Resources Code Section 25525. This decision by the Committee can be, and should be, based on the existing evidentiary record.

IV. Conclusion

The Carlsbad AFC proceeding has been long and difficult, and it is time for it to reach a conclusion. Thus, the Committee needs to reject further efforts at delay, such as intervenor requests that the Revised PMPD (or Final Decision) be delayed until there are further steps regarding the Once-Through Cooling Policy, or until there is a decision by the Public Utilities Commission on the PPAs, or until the California Independent System Operator has done further transmission studies. There has been enough process and enough analysis, and the Committee and the Commission have enough information to make their final decisions. The world of energy policy and it correlatives will never stand still, and thus decisions on such matters must always be made with less than perfect information. Four years of project analysis have provided a sufficient basis for a decision.

Likewise, Staff urges that the final hearing be strictly limited to the narrow issues of the further analysis requested by the Commission when it remanded the issues to the Committee at its June 30, 2011 Business Meeting. Failure to do so will only extend the hearings unnecessarily, and delay the Final Decision.

September 23, 2011

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APPLICATION FOR CERTIFICATION FOR THE *CARLSBAD ENERGY CENTER PROJECT*

Docket No. 07-AFC-6
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(Revised 9/19/2011)

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DECLARATION OF SERVICE

I, Maria Santourdjian, declare that on, September 23, 2011, I served and filed copies of the attached CEC Staff Comments, dated September 23, 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].

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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.

Originally Signed by
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