

DOCKET

07-AFC-6

DATE APR 27 2012

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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:) DOCKET # 07-AFC-6
APPLICATION FOR CERTIFICATION)
CARLSBAD ENERGY CENTER PROJECT)
(CECP))

April 27, 2012

Power of Vision Comments on the Revised Presiding Member's Preliminary Decision

Julie Baker
Arnold Roe, PhD
Power of Vision
4213 Sunnyhill Dr
Carlsbad, CA 92008
Tel: 760.729.4068
julbaker@pacbell.net
roe@ucla.edu

Throughout these proceedings, Power of Vision has had faith in a just process that would endeavor to meet the needs of California electrical consumers and the wishes of Carlsbad citizens. We have attended countless meetings and read thousands of pages of documents all in an effort to educate ourselves to the efficacy of the Carlsbad Energy Center Project. Early on, citizens were led to believe by the applicant that a smaller, more efficient power plant was being proposed for a site just west of I-5. This new power plant would meet the requirements of the South Carlsbad Redevelopment Area as well as provide the citizens with the added benefit of the shutdown of Encina and redevelopment of the site.

As this long process continued, it became clear the CECP was not as advertised. There is nothing “small” about a 540 mega-watt power plant *and* there is NO guarantee Encina will be dismantled, *and* CECP will continue to use ocean water, *and* its footprint is larger than the existing Encina, *and* the widening of I-5 will create unsafe conditions for first responders *and* CECP will visually degrade the view shed *and* CECP violates City of Carlsbad land-use regulations *and* CECP violates the Coastal Act. The City of Carlsbad and its citizens have been subject of derision and chiding by CEC and the applicant for wanting to redevelop the property to a use more conducive to coastal recreation. Yet, the Warren Alquist Act specifically says local plans merit consideration in siting cases.

§ 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.

Yet, from Power of Vision's point of view, several state and local LORS have either been ignored or been considered de minimus.

The current version of the RPMPD continues to be riddled with internal inconsistencies and contradictions, as well as logical deficiencies. For example, at the April 19, 2012 hearing, the Hearing Officer indicated that a primary reason for justifying the overrides was the need for local Encina load capacity based on CAISO testimony provided by Exhibit 199U. Putting aside for the moment the undocumented and un-cross-examined validity of this Exhibit, CAISO has stated that the conclusions of this Exhibit are based on EPS units 4 & 5 NOT being available. Yet on pg 1-2 (and elsewhere) the RPMPD states, "EPS Units 4 and 5, Part of a subsequent EPS expansion that occurred in the late 1970's, would continue generating electricity regardless of this procedure or its outcome."

Clearly, if EPS Units 4 and 5 will be running, there is no shortage in the local Encina area. Certainly, these units will be available until 2017, and as CEC Staff and the applicant have pointed out in previous testimony, alternative measures for providing condensate cooling or Water Board permission could keep those units operating indefinitely (see pg. 8.1-23 of the RPMPD). Therefore, there is no current need for additional power in the local Encina area and there is no basis for an override.

Section 25524.5 of the Revised Warren-Alquist Act states that "The commission may not certify a facility contained in the application when it finds, pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that the facility is required for public convenience and necessity and there are not more prudent and feasible means of achieving public convenience and necessity..." Page 3-13 of the RPMPD cites a purported "local generation

need of at least 20MW, and perhaps 50 MW” and goes on, (pg. 3-15), to justify the much larger 540MW CECP by stating “A smaller project...would not make full use of the capacity of the existing infrastructure at that location...” However, this reason does not meet the test of public convenience and necessity. Providing the “necessary” required 20-50MW of new power at the site does not preclude future additions, if such needs were to become necessary.

Furthermore, the committee has failed to pursue other, more prudent means of meeting Encina local capacity needs, such as relatively low cost transmission line upgrades.

Power of Vision is puzzled by this process. Throughout the proceedings we were reminded that market conditions would determine if CECP is built. Staff, the Hearing Officer and Committee all made reference to market conditions determining whether CECP will ever rise from the ground. The RPMPD speaks to this issue in the Override section (9.5). Several references were also made at the April 19 hearing that over seventy power plants have been approved by the CEC and never built for lack of power purchase agreements or other reasons. It appears to Power of Vision a parallel process exists with no real benefit to the citizens of California or ratepayers.

San Diego Gas & Electric and the Public Utility Commission exist on one track while the California Energy Commission and California Independent System Operator on the other track. All of the organizations claiming a duty to “keep the lights on”. In reality, from a ratepayer’s perspective, SDG&E and PUC seem to be more attuned to the actuality of providing electrical service with the costs to the ratepayer in mind. One must question the “need” for the current siting process as practiced in the State of California. Surely it makes no sense to spend millions of dollars siting power plants that in all probability will never be built.

The Revised Presiding Member’s Preliminary Decision recognized the need to override the siting of CECP on two issues. Findings were made to override LORS based on testimony of

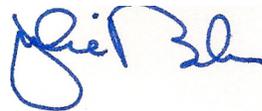
CAISO that suggested 20-MW would be needed in the Encina area. Yet, CECP is a 540-MW facility that has been approved to meet a 20-MW requirement. Even more disturbing is that the override findings were made based on information that has not been fully vetted by relevant agencies. “The projections now available indicate that additional generation is necessary in the San Diego region and the Encina subarea. (RPMPD 9.8) It has been further acknowledged that the data presented by CAISO is not correct. However, CEC seems reluctant to correct that mistake when they should have an ethical duty to correct the record and make override findings based on accurate, well-vetted information. The testimony provided by CAISO at the December 12 hearing was instrumental in the decision to issue two overrides of LORS.

Power of Vision continues to be concerned about the Committee’s fire safety decisions. On pg 6.4-11 the RPMPD overrules the California Fire Code provision, which allows the local fire chief to require an increase in minimum access widths by stating “While the opinions of the local fire officials who will provide the fire protection services are an important consideration, they are not dispositive.” And “Given the Energy Commission’s exclusive jurisdiction over the permitting and regulation of thermal power plants such as the CECP, the final determination of the appropriate access widths is ours to make as we must both set the standards for the project and then enforce them.” This opens up a Pandora’s box of potential conflicts with existing California law, not only with the fire codes but also with other safety codes, such as building and seismic codes. It is doubtful whether the Warren-Alquist Act intended the inexperienced judgment of the CEC to supercede the expert judgment legislated in the various California codes. This ruling by the Committee may be establishing a precedent that it will come to regret.

Additionally Power of Vision takes issue with the determination of the Committee that CECP is coastal dependant and cannot understand the logic by which this was made. The applicant has chosen to make CECP coastal dependant by not agreeing to expand the Carlsbad

water recycling plant. We do not believe that economic considerations are relevant in coastal dependency determinations. Additionally, the operation of CECP will continue the use of ocean water. The reduced use of ocean water over “what is permitted” is often cited as a benefit of approving said license. This is not what has been happening in reality over the last several years as units 1-5 have operated at approximately 6% of capacity. CECP will continue the use of seawater over a no-project alternative.

Power of Vision respectfully asks the decision to license CECP be overturned. It seems a bureaucratic stretch to justify illusory project benefits to override the application. It clearly does not meet land use and environmental LORS as the Committee has stated in the RPMPD. Yet the reason for finding “public convenience and necessity” is based on unvetted data the parties were not able to question, verify or cross-examine. There are still outstanding issues relating to fire safety and disputes as to whether CECP is coastal dependant. With all the negatives associated with the project, it begs reversal for the 20 -50-MW need that most likely could be met by other means. CEC staff, the applicant and consultants spent many hours suggesting Intervenors concerns were speculative. Yet, here we have the approval of a 540 MW plant occupying valuable coastal resources based on the speculation of CAISO. It seems the more prudent course of action would be to deny the application for certification.



Julie Baker

Arnold Roe, PhD

DECLARATION OF SERVICE

I, Julie Baker, declare that on April 27, 2012, I served and filed a copy of the attached Power of Vision comments on the PMPD. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at:

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:

X 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 marked “hard copy required.”

AND

For filing with the Docket Unit at the Energy Commission:

X 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);

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

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 US Postal Service with first class postage thereon fully prepaid:

**California Energy Commission
Michael J Levy,
1516 Ninth Street, MS-14
Sacramento, CA 95814
mlevy@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



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
PROOF OF SERVICE
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APPLICANT

Jennifer Hein
George Piantka, PE.
NRG Energy, Inc., West Region
5790 Fleet Street, Ste. 200
Carlsbad, CA 92008
jennifer.hein@nrgenergy.com
george.piantka@nrgenergy.com

APPLICANT'S CONSULTANTS

Robert Mason, Project Manager
CH2M Hill, Inc.
6 Hutton Centre Drive, Ste. 700
Santa Ana, CA 92707
Robert.Mason@ch2m.com

Megan Sebra
CH2M Hill, Inc.
2485 Natomas Park Drive, Ste. 600
Sacramento, CA 95833
Megan.Sebra@ch2m.com

COUNSEL FOR APPLICANT

John A. McKinsey
Stoel Rives, LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
jamckinsey@stoel.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

INTERVENORS

Terramar Association
Kerry Siekmann & Catherine Miller
5239 El Arbol
Carlsbad, CA 92008
siekmann1@att.net

City of Carlsbad
South Carlsbad Coastal
Redevelopment Agency
Allan J. Thompson
21 "C" Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

City of Carlsbad
South Carlsbad Coastal
Redevelopment Agency
Joseph Garuba,
Municipals Project Manager
Ronald R. Ball, Esq., City Attorney
1200 Carlsbad Village Drive
Carlsbad, CA 92008
Joe.Garuba@carlsbadca.gov
ron.ball@carlsbadca.gov

California Unions for Reliable Energy
(CURE)
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
gsmith@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

Center for Biological Diversity
c/o William B. Rostov
EARTH JUSTICE
426 17th Street, 5th Floor
Oakland, CA 94612
wrostov@earthjustice.org

Power of Vision
Julie Baker & Arnold Roe, Ph.D.
4213 Sunnyhill Drive
Carlsbad, California 92013
julbaker@pacbell.net
roe@ucla.edu

Rob Simpson
Environmental Consultant
27126 Grandview Avenue
Hayward, CA 94542
rob@redwoodrob.com

April Rose Sommer
Attorney for Rob Simpson
P.O. Box 6937
Moraga, CA 94570
aprilsummerlaw@yahoo.com

**ENERGY COMMISSION –
DECISIONMAKERS**

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

KAREN DOUGLAS
Commissioner and Associate Member
kdougl@energy.state.ca.us

Galen Lemei
Adviser to Commissioner Douglas
glemei@energy.state.ca.us

Tim Olson
Adviser to Vice Chair Boyd
tolson@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

ENERGY COMMISSION STAFF

Mike Monasmi
Siting Project Manager
mmonasmi@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

**ENERGY COMMISSION – PUBLIC
ADVISER**

Jennifer Jennings
Public Adviser's Office
publicadviser@energy.state.ca.us

*indicates change