

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

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In the Matter of:

The Application for Certification for the
CARLSBAD ENERGY CENTER
PROJECT

Docket No. 07-AFC-6

**CARLSBAD ENERGY CENTER LLC'S ADDITIONAL COMMENTS ON THE
COMMITTEE'S REVISED PRESIDING MEMBER'S PROPOSED DECISION**

April 27, 2012

John A. McKinsey, Esq.
Melissa A. Foster, Esq.
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Phone: (916) 447-0700
Facsimile: (916) 447-4781

Attorneys for CARLSBAD ENERGY CENTER LLC

STATE OF CALIFORNIA

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I. INTRODUCTION

On March 28, 2012, the Committee assigned to the Carlsbad Energy Center Project ("CECP") Application for Certification proceeding issued the Revised Presiding Member's Proposed Decision ("RPMPD"). The Notice of Availability of the RPMPD requested the parties to the proceeding to submit initial comments on or before April 17, 2012 to facilitate discussions at the April 19, 2012, Committee hearing on the RPMPD. The Notice of Availability also required the parties to submit any additional comments on the RPMPD on or before April 27. To that end, Applicant, Carlsbad Energy Center LLC, presents herein its final comments on the Revised Presiding Member's Proposed Decision.¹

II. APPLICANT'S ADDITIONAL COMMENTS ON THE RPMPD

While Applicant maintains its position that the RPMPD presents a sound and responsible decision by the Committee, Applicant is compelled to provide the following additional comments, all of which are responsive to issues presented by the parties at the April 19th

¹ Applicant incorporates by reference its comments submitted on April 17, 2012.

Committee Hearing on the RPMPD. Specifically, Applicant addresses the following subjects, in no particular order:

- CECP’s Compliance with the California Coastal Act;
- The City’s proposed changes to LAND-1 and why a temporary CRT is infeasible;
- Anticipated Project schedule;
- Applicant’s proposed condition of certification for a schedule of fees to be paid to City; and,
- The “Commission’s” obligation to meet and confer with the “City” pursuant to Public Resources Code Section 25523(d)(1).

A. CECP Complies with the California Coastal Act

The City yet again contends that CECP is not a proper development in the proposed location on the EPS site by claiming that the “RPMPD misunderstands the Coastal Act.” (City of Carlsbad’s Initial Comments at p. 4 (Apr. 17, 2012). The City improperly contends that the Coastal Act requires that all development in the coastal zone must be a coastal-dependent use. Section 30101 defines “coastal-dependent development or use,” but that section is not a legal requirement. The Coastal Act simply does not require that only coastal-dependent uses may be developed within the coastal zone. Even if such a requirement existed under the Coastal Act, the CECP, as discussed below, is coastal-dependent.

1. CECP Complies with the Policies of the Coastal Act.

The Coastal Act provides numerous findings and declarations to guide development in the coastal zone and ensure the protection of coastal resources. For instance, the Coastal Act declares that existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this section 30001(d) are essential to the economic and social well-being of the people of California. (Pub. Res. Code § 30001(d).) In addition, the Coastal Act provides:

[t]he Legislature further finds and declares that, notwithstanding the fact electrical generating facilities, refineries, and coastal-dependent developments, including ports and commercial fishing facilities, offshore petroleum and gas development, and liquefied natural gas facilities, may have significant adverse effects on coastal resources and coastal access, it may be necessary to locate such developments in the coastal zone in order to ensure that inland as well as coastal resources are preserved and that orderly economic development proceeds within the state.

(Pub. Res. Code § 30001.2 (emphasis added).) Moreover, one of the basic goals for the coastal zone is to “[a]ssure priority for coastal-dependent² and coastal-related development over other development on the coast.” (Pub. Res. Code § 30001.5 (emphasis added).) The Commission is not required to find that the Project is coastal-dependent in order to determine that CECP complies with the Coastal Act.

Section 30260 of the Coastal Act provides that coastal-dependent industrial facilities “shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division.” (Pub. Res. Code § 30260.) Section 30260 also prescribes that new or expanded coastal-dependent industrial facilities, when they cannot be feasibly accommodated consistent with other Coastal Act policies, will nonetheless be allowed under section 30260 if certain conditions are met. Thus, contrary to the City’s assertions, it is clear that the Coastal Act does not specifically limit development in the coastal zone, of electrical generating facilities or any other kind of development, to coastal-dependent uses. (*Id.* at §§ 30001.2, 30250-30255.³)

As noted, the Coastal Act gives priority to coastal-dependent developments over other developments on or near the shoreline. (*Id.* § 30255.) Section 30264 of the Coastal Act states

² A “coastal-dependent development or use” is “any development or use which requires a site on, or adjacent to, the sea to be able to function at all.” (*Id.* § 30101.)

³ For example, for existing developed areas in the coastal zone, the Coastal Act provides that “new residential, commercial, or industrial development, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it.” (Pub. Res. Code § 30250(a).) The CECP will not newly develop a coastal zone area. The CECP will be located entirely within the existing fenceline of the EGS property.

that “new or expanded thermal electric generating plants may be constructed in the coastal zone if the proposed coastal site has been determined by the [CEC] to have greater relative merit . . . than available alternative sites and related facilities for an applicant’s service area.” (Pub. Res. Code § 30264.) Thus, even if a proposed power plant is not coastal-dependent and may significantly affect coastal resources, the facility may be constructed in the coastal zone.

Even though coastal dependency is not a prerequisite for development in the coastal zone, CECP is in fact a coastal-dependent development. CECP includes an ocean-water purification system to provide the water supply necessary for operation of the proposed units if reclaimed water is unavailable. In addition, CECP will discharge process wastewater through EPS’ existing ocean-water discharge system. The intake for the ocean-water purification system will be from the existing EPS ocean water discharge channel. It is estimated that for ocean-water purification, CECP will take in 3,000 gallons per minute (i.e., equivalent to one service water pump for the EPS cooling water system), or 604,500 gallons per day to 1.22 million gallons per day of ocean water, from the EPS discharge stream. CECP could not function without the EPS ocean-water discharge system. Therefore, CECP is a development that requires a site adjacent to the sea to be able to function. If CECP were not located adjacent to the Pacific Ocean, it would not have any water to operate or a means to dispose of its process wastewater.

Contrary to the City’s assertions, the RPMPD conducts the requisite analysis under the Coastal Act and properly finds that the CECP is coastal-dependent. Specifically, the RPMPD states:

The CECP would be located on the same property as the existing EPS power plant, and all of its associated infrastructure would be on-site at the existing EPS. Public Resources Code section 30101 defines “Coastal-dependent development or use” as “any development or use which requires a site on, or adjacent to, the sea to be able to function at all.” While the CECP would not use ocean water for once-through cooling locating the CECP at the existing EPS site (which is a coastal dependent use) facilitates its proposed ocean-water purification system for supplying water to its air-cooled cooling system.

(RPMPD at 8.1-6 - 8.1-7 (emphasis added).)

Even though the existing EPS steam boiler Units 1, 2, and 3 would be retired upon successful commercial operation of the new CECP generating units, the remaining EPS Units 4 and 5 would continue operating. The EPS remains a coastal dependent facility. In addition, because the City of Carlsbad is unable to supply reclaimed water (Exs. 193; 200, p. 4.9-14) to the project for cooling and other industrial purposes, it is necessary that CECP use its proposed ocean-water purification system. Thus, the proposed project (CECP generating units 6 and 7) is both an expansion of a coastal dependent use and a coastal-dependent use in its own right. (Ex. 200, pp. 4.5-10 – 4.5-13.)

(RPMPD at 8.1-7.)

The City also errantly claims that the RPMPD fails to properly analyze section 30251 of the Coastal Act.⁴ Again, the City's claims fall short. Public Resources Code section 30251 provides, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

(Pub. Res. Code § 30251.) The CEC routinely evaluates the Coastal Act requirements as part of its review of AFCs for proposed energy generation facilities located in the coastal zone. In fact, as part of such review, as is the case in the RPMPD, the Commission specifically considers section 30251 of the Coastal Act. (Pub. Res. Code § 30251.) In the Visual Resources section, the RPMPD specifically discusses section 30251 in the context of applicable LORS (RPMPD 8.5-2; Appendix A at 32) and cumulative impacts. (RPMPD 8.5-47.)

The RPMPD conducts a thorough visual resources analysis and includes various Visual Resources Conditions of Certification to mitigate any potential significant impacts or to enhance

⁴ Section 30251 is found in Chapter 3 of the Coastal Act, which is entitled "Coastal Resources Planning and Management Policies." (Emphasis added.)

the project, both of which facilitate the goals of section 30251. In particular, CECP complies with section 30251, except in one specific instance where mitigation is required for compliance.

As noted in the RPMPD:

[T]he cumulative effects resulting from a removal of the existing berm and trees, and the exposure of the CECP and EPS power plants would not, absent mitigation, conform to California Coastal Act Policy 30251. . . .

In order to address potential cumulative impacts of the I-5 Widening Project, we adopt Condition of Certification VIS-5, Cumulative Impact Buffer Zone, Coordination with Caltrans, and Mitigation Plan.

Under Condition of Certification VIS-5, the Applicant shall be required to maintain a buffer zone immediately west of I-5, between the existing NRG fence line and existing east tank farm perimeter road, in order to maintain existing visual screening; accommodate future I-5 widening as necessary; and incorporate future visual screening and hazard protection features needed to fully address potential cumulative impacts that could be caused by the proposed I-5 widening. (Ex. 200, pp. 4.12-26 – 4.12-29.)

(RPMPD at 8.5-47; 8.5-48.)

The City takes issue with the fact that section 30251 is only mentioned in the cumulative impacts discussion in the RPMPD. (City’s Initial Comments at 8.) The City then opines that the RPMPD should have analyzed different “criteria” under section 30251, but the City fails to identify such criteria. (*Id.*) Instead, the City cites the CEQA Guidelines Checklist for Aesthetics (as relied on in the RPMPD) and asks the Committee to compare that Checklist “to the scope of PRC section 30251.” (City’s Initial Comments at 8.) The City fails to acknowledge, however, that the RPMPD covers the parameters of the CEQA checklist⁵ as well as CECP’s compliance

⁵ CEQA requires an evaluation of whether the CECP would: adversely affect a scenic vista; damage scenic resources including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway; degrade the existing visual character or quality of the site and its surroundings; or create a new source of substantial light or glare which would adversely affect day or nighttime views in the area. (14 Cal. Code Regs. § 15382 and App. G, Part I; RPMPD at 8.5-1.)

with LORS outlined in Visual Resources Table 1, including PRC section 30251.⁶ After such analysis, the RPMPD concludes that mitigation is necessary to mitigate any potential cumulative impacts to visual resources from the I-5 widening project and CECP.

2. The Committee Should Not Rely on a 1989 NOI Project.

Lastly, in evaluating a newly proposed facility, neither the Warren-Alquist Act, nor the Commission's power plant siting regulations suggest, much less require, that the Commission consider its previous findings or decisions on supposedly similar projects. Thus, the City's continued reliance on documents associated with San Diego Gas & Electric's ("SDG&E") Notice of Intent ("NOI") proceedings is misplaced ("1989 NOI Project"). Each project proposed for certification is required to submit a comprehensive set of data and an evaluation of the project's potential impacts. (*Id.* at §§ 25519, 25520.) Information on a different type of gas-fired power plant proposed more than 20 years ago for the EPS site has no relevance to the current Project, which utilizes a different technology, occupies a different footprint at a different location (east of the railroad tracks) and has radically different air quality, biological, and visual impacts, just to name a few. Moreover, the 1989 NOI Project utilized once-through cooling technology, proposed an expansion of the cooling water discharge channel, further limited public beach access, and included two 150-foot emission stacks as well as a 75,000 square-foot building. Although the City concurs that "some impacts [between the 1989 NOI Project and CECP] are clearly different," the City incorrectly concludes that "many of the impacts, including visual resources are identical." (City's Initial Comments at 10 (emphasis added).) This is a materially false statement and any concerns raised over twenty years ago for a different project utilizing different technology, proposed west (not east) of the railroad tracks, cannot be

⁶ As noted previously by the CEC, enhancements to visual quality, including the demolition and removal of larger, older power plant facilities, are measures that can be taken to comply with section 30251. (*See* California Energy Commission's 2005 Environmental Performance Report of California's Electrical Generation System, Prepared in Support of the 2005 IEPR Proceeding (04-IEPR-01G) (June 2005) at p. 162 (discussing that the conditions imposed on the Morro Bay and El Segundo Projects to ensure their consistency with section 30251).)

transferred to CECP.

B. LAND-1 – Changes Proposed by the City and Why the Temporary CRT is not Feasible

The City has requested changes to LAND-1 to require a temporary Coastal Rail Trail (“CRT”) be built and maintained by the project owner. There are numerous problems with this proposal as set forth below.

First, LAND-1 has been largely unchanged for several years since it was originally proposed by CEC Staff. The City’s last minute proposed change, which is not founded under law, but as a request, is untimely, unnecessary and too broad in scope to be incorporated without delaying the Project. The City already used the proposed changes provided by LAND-2 and LAND-3 to argue for further environmental analysis of the Project. Here, such proposed changes to LAND-1 would invariably result in a similar claim by the City. Further, as noted below, the change is highly problematic and the more robust analysis it might have received had the City made a timely request for same would reveal the problems associated with having an informal, temporary paved trail cut through the property.

Second, the City’s proposed changes presume that a CRT will pass through the power plant property. However, it remains possible that the CRT will not cross through the power plant property.

Third, the City’s proposed changes also appear to assume that the CRT passes through the property east of the railroad tracks. However, as required by the RPMPD in Condition of Certification WORKER-SAFETY-9, the CRT must pass through the power plant property west of the railroad tracks, if it passes through the power plant property at all. The City’s proposed last minute changes to LAND-1 appear to be an attempt to obligate the project owner to provide a temporary CRT east of the tracks despite the fact that long range planning requires that the full and complete location of the CRT be determined before any portion of it should be built. CECP precludes the CRT from being located east of the tracks. Moreover, NRG and the City previously agreed to locate the CRT in a mutually agreeable location and NRG and the City have

discussed a feasible alternative location along the west of the tracks that in fact is aesthetically superior but no agreement has yet been reached.

Finally, the City's proposed changes would require the project owner to build, maintain and be responsible for a temporary CRT through its power plant property until start of construction of CECP despite the fact that the RPMPD does not guarantee an easement, but rather allows for an equivalent payment if no agreement can be reached. At the April 19, 2012 RPMPD hearing, the City implied that NRG is not supportive of the CRT and does not want to pay for a temporary CRT. This is far from accurate. NRG, through this condition and as host of other vital infrastructure planned at this site, is committed to facilitating the CRT and other land dedications without cost to the City, County or community. If the mutually agreeable location is not on the power plant property, NRG is committed to providing funding at a level equivalent to the associated power plant project pursuant to Condition of Certification LAND-1. Also, the City's comments are not consistent with NRG's community support, commitment and involvement. For example, NRG has provided over \$800,000 in assistance to local non-profit organizations over the last five years, and its employees are active participants in the Carlsbad community. NRG is a leading sponsor of the Boys and Girls Club of Carlsbad, the Agua Hedionda Lagoon Foundation, San Diego Food Bank, and the Injured Marine Semper Fi Fund. NRG is a strong supporter of local educational programs and co-founded the Military Mentoring Initiative to aid service members in their transition to the civilian workforce. NRG has worked with the City of Carlsbad to promote tourism and regularly sponsors community events, including the Carlsbad Beach Fest, Art Splash, and the Carlsbad Marathon. For all these reasons, the City's late request that the project owner construct and maintain a temporary CRT without regard to location and safety, regardless of whether a CRT would permanently cross the power plant site, should be rejected.

C. Anticipated Project Schedule

Applicant currently estimates that construction of the new facility would start in the first quarter of 2014 with operations beginning during the summer of 2016. These projections are

based on certain assumptions, including CEC approval occurring May 31, 2012, any appeals being resolved or completed, and any other permits or approvals being completed on a timely basis. It also assumes an adequate compensation mechanism is in place commensurate with required procurement points in the development cycle.

D. Proposed Condition of Certification for Schedule of Fees to be Paid to the City of Carlsbad

The following condition of certification is proposed to address the City's concerns and comments regarding certain fees to be paid to the City. Applicant believes this proposed condition satisfies the City's insistence on a condition relating to such fees.

SOCIO-1 The project owner shall prepare a fee schedule detailing fees to be paid as mandated by law and as related to the development of the project. Such fees may include school impact fees or other local jurisdictional fees.

Verification: At least 30 days prior to start of project construction, the project owner shall provide the City of Carlsbad for review and comment and to the CPM for review and approval a proposed fee schedule with provisions for ensuring payment of such fees to the obligatory agencies.

E. The Requirements of Public Resources Code Section 25523 Have Been Clearly Satisfied and the Commission Should Approve the Project as Proposed on May 31, 2012

The RPMPD fully complies with the various requirements set forth in Public Resources Code section 25523(d) ("Section 25523(d)"), and the Commission should approve the Project as proposed at the May 31, 2012 hearing. While the RPMPD makes findings that the Project is not consistent with certain local land use LORS (*see, e.g.*, RPMPD at 8.1-31-32), the RPMPD makes the override findings required by Public Resources Code section 25525 (*see* RPMPD at 9-9-11) and appropriately recommends approval of the Project. Yet, in another thinly veiled attempt to derail this proceeding and impede approval of the Project, the City contends that the Commission must further consult and meet with the City regarding the Project's conformity with the City's land use LORS. As discussed in further detail below, the Commission should disregard the City's pointless request because: (1) the Commission cannot consult and meet in the manner

suggested by the City and comply with the various timing requirements contained in the Warren-Alquist Act or the substantive requirements of the Ralph M. Brown Act; (2) the City, as an intervenor in the CECP licensing proceedings, has routinely consulted and met with the Commission through the Committee and Staff on numerous occasions; and (3) a further consultation and meeting between the City and the Commission would be futile in light of the City's blatant opposition to the Project.

1. The Vague "Consult and Meet" Language Contained in Section 25523(d)(1) Conflicts with Timing Requirements Contained in the Warren-Alquist Act and the Substantive Requirements of the Ralph M. Brown Act.

The Commission need not consult yet again with the City regarding the Project's compliance with the City's local land use LORS because such an additional consultation will conflict with the timing requirements of the Warren-Alquist Act and the open meeting requirements of the Ralph M. Brown Act. Section 25523(d)(1) states in pertinent part:

The commission shall prepare a written decision after the public hearing on an application which includes all of the following:

...

(d)(1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 23216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other applicable local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with a state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

The language in Section 25523(d)(1) indicating that the commission should consult and meet with a local agency before making override findings fails to comport with the practice whereby the committee and presiding member prepare the PMPD that is presented to the

Commission (*See* 20 Cal. Code Regs. §§ 1749-1755). The PMPD is considered by the full commission during adoption hearings, and, at the conclusion of such hearings, the commission adopts a final written decision, including any override findings (*See id.* §§ 1754-1755). The “consult and meet” language in section 25523(d)(1) ignores these procedural realities and would have the Commission conduct an interagency consultation after it renders a final decision. Because the Commission’s findings under section 25523 trigger the running of the time for a party to file a petition for reconsideration under Public Resources Code section 25530, the Commission could not possibly issue findings and then consult with an agency as suggested by section 25523(d)(1), as such consultation would impede a party’s ability to file a useful petition for reconsideration. Further, the Commission could not feasibly conduct such a consultation while timely complying with its obligation to issue a final decision within twelve (12) months after filing of the application for certification (*See* Pub. Res. Code § 25540.6). Finally, it is not clear how a meeting between the Commission and the City could be held in a manner consistent with the Ralph M. Brown Act, which requires local agencies like the City to conduct such meetings in forums open to the public (*See* Cal. Gov. Code § 54940 *et seq.*).

Such inconsistencies throughout the Public Resources Code and related regulations and conflicts with the Ralph M. Brown Act may explain why, in its history of interpreting and applying Section 25523(d), the Commission has never conducted any formal delegated meeting between representatives of the Commission and representatives of an agency whose LORS are subject to an override. The Commission should not strain itself to do so in this case where, as described below, the City has actively consulted with the Commission, the Committee and Staff throughout more than four years of proceedings in this matter.

2. The City Has consulted and met with the Commission and Staff *ad nauseum* regarding the City’s various land use LORS.

Notwithstanding the procedural inconsistencies described above, section 25523(d)(1) attempts to encourage interagency interaction between the Commission and an agency whose LORS will be the subject of an override. In this case, such interaction has been abundant

throughout the CECP proceedings. On December 30, 2008, the City filed a petition to intervene, which was granted on January 12, 2009. (See CECP Docket Log Nos. 49548 and 49686). Since intervening in the proceedings, the City has filed no fewer than 18 briefs, comments and letters regarding the Project's conformity with the City's land use LORS.⁷ The City and various members of the City Council, including the Mayor of the City of Carlsbad, have also appeared at multiple hearings in this proceeding, including the April 19, 2012 Committee Conference that took place in Carlsbad after issuance of the RPMPD that includes the override findings. Through the City's various filings and statements at multiple hearings, the City has clearly indicated its views regarding the Project's conformity with the City's land use LORS. Accordingly, the spirit of the "meet and consult" language contained in section 25523(d)(1) has been fulfilled in this proceeding, and the Commission should approve the Project as described in the RPMPD without engaging in any further consultation with the City.

3. Yet Another Consultation Between the City and the Commission Would Be Futile Because the City Has Crafted Its Land Use LORS Specifically to Block Approval of the Project.

Even if the Commission were to delay approval of the Project, which has been pending

⁷ The City has submitted no less than 70 letters, briefs, or other documents in this proceeding, many of which include comments relating to land use. For brevity, Applicant points this Committee to the following sample list of the City's filings as such are chiefly related to the City's position on land use issues: City Letter (May 1, 2008) advising the CEC that the City does not support the CECP; City Letter (Aug. 28, 2008) at p. 1 and Exhibit 1 thereto citing to the City's Resolution No. 2008-235, which "Opposes the Proposed [CECP] and Precludes all Non-Coastal Dependent Industrial Applications, including Energy Generation from any Future Land Use at the Encina Power Station Site"; City's Status Report #3 (Jan. 30, 2009) at p. 2 advising the Committee that "[o]n January 27, 2009, the City of Carlsbad...passed a joint Resolution 2009-020...which...made the determination [CECP] is inconsistent with all applicable [LORS]."; City's Comments on PMPD (June 13, 2011) at pp. 17-20, indicating the "City firmly believes...[the Committee] will need to override multiple state and local legal requirements."; City's Request for Official Notice (Oct. 17, 2011) at pp. 1-3 and related attachments pointing the Commission to the City's Resolution 2011-230, which amended the "General Plan Public Utilities land use designation and Ordinance CS-158, which amended the Public Utility Zone list of permitted uses - each "prohibits a primary land use in the Coastal Zone [that] proposes energy production."; and City's Brief on LORS Conformance and Override Issues (Dec. 5, 2011) at pp. 3 and 6-10 (stating "[t]he legislative body has taken steps to make it clear that the proposed power plant cannot be permitted...at this particular site." (at p. 3) and the "Commission must make an affirmative decision on a LORS override based on the evidentiary record...").

since September 2007, in order to consult with the City yet again regarding the Project's conformity with the City's land use LORS, such consultation would be futile because the City has clearly demonstrated its blatant opposition to the Project. In fact, in its May 1, 2008 letter to the Commission, the City plainly stated, "[B]e advised that Carlsbad does not support the CECP," and "[t]he proposed CECP is not consistent with the City's desired Vision [sic] for the property." Moreover, in one of its various efforts to block the Project, the City recently amended its land use LORS to specifically create noncompliance issues for the Project. Accordingly, the RPMPD properly finds that:

11. It is unnecessary and futile to consult with the City of Carlsbad regarding the above inconsistencies with City General Plan, zoning and other provisions (Pub. Resources Code, § 25523(d)(1)) because the City recently amended them in order to create the inconsistencies and prevent the development of this project, thereby indicating its unwillingness to allow the project.

(RPMPD at 8.1-32). The Commission should not fall victim to the City's latest delay tactic because yet another consultation with the City would be unsuccessful in light of the City's blatant opposition to the Project, which has been clearly demonstrated through the City's active participation in the proceedings.

III. CONCLUSION

In short, Applicant believes the record in this proceeding fully supports the RPMPD, which can be presented to the full Commission for final approval on May 31, 2012.

Date: April 27, 2012

Stoel Rives LLP



John A. McKinsey
Attorneys for Applicant
CARLSBAD ENERGY CENTER LLC



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**
(Revised 3/27/2012)

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

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**

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

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

Tim Olson
Adviser to Commissioner Douglas
tolson@energy.state.ca.us

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

**ENERGY COMMISSION
STAFF** Mike Monasmith
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

DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on April 27, 2012, I served and filed a copy of the attached:

**CARLSBAD ENERGY CENTER LLC'S ADDITIONAL COMMENTS ON THE COMMITTEE'S
REVISED PRESIDING MEMBER'S PROPOSED DECISION**

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:

- 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:

- by hand delivering an original paper copy and emailing an electronic copy 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:

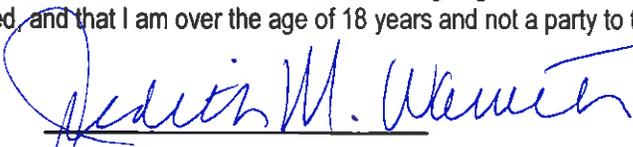
CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 07-AFC-6 1516 Ninth Street,
MS-4 Sacramento, CA 95814-5512
docket@energy.state.ca.us

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 1516 Ninth Street
MS-14 Sacramento, CA 95814
mlevy@energy.state.ca.us

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.



JUDITH M. WARMUTH

*indicates change