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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

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

Terramar Comments regarding the Revised Presiding Member's Proposed Decision

April 27, 2012

Kerry Siekmann
Intervener Terramar
5239 El Arbol
Carlsbad, CA 92008
(760) 438-5611

STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

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

Terramar Comments regarding the Revised Presiding Member's Proposed Decision

1. Terramar comments and offers corrections for the Project Description section of the Revised Presiding Member's Proposed Decision (RPMPD).

2. Terramar demonstrates inconsistencies in the California Environmental Quality Act (CEQA) Cumulative Analysis performed by California Energy Commission (CEC) Staff for the RPMPD.

    a. Currently the RPMPD calls the shutdown of Units 4 and 5 "a probable future event" and a "speculative" event creating inconsistencies in the incomplete cumulative analysis.

    b. The RPMPD must clarify whether the shutdown of Units 4 and 5 is "speculative" or a "probable future event".

        i. If the shutdown is "speculative" then the California Energy Commission (CEC) is obligated to invalidate the "overrides" as they would be based on "speculative" need.
        ii. If the shutdown is a "probable future event" then CEC must complete CEQA cumulative analysis of the "event" in all project areas.
        iii. If the shutdown is a "probable future event" then Encina's will no longer be coastally dependent. The Carlsbad Energy Center Project (CECP) will no longer be an expansion of a coastally dependent use?

3. Terramar opposes the CECP Committee's decision to declare the Energy Commission the Fire Code Official. "Fire code official" is defined as "[t]he fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative." (24 Cal. Code Regs., § 202.)

a. The Energy Commission is unable to enforce the code.
b. The Energy Commission names the Carlsbad Fire Dept. as Code enforcement in Appendix A.
c. Therefore the Carlsbad Fire Chief is the "Fire Code Official" and responsible for deciding the fire lane width for both the "pit" and the "upper ring road".

4. Terramar provides comments with reference to errors in the Alternatives Section of the RPMPD. Terramar suggests the section be revised and reevaluated.

5. The CECP and its unnecessary desalination unit violate the Coastal Act. Terramar will offer proof that the City offered the Applicant the ability to enlarge the recycled water facility in 2007, a year before the desalination unit was proposed. Terramar submits that the desalination unit is an unnecessary "financially created coastal dependence".

6. Terramar challenges the RPMPD override decisions which were to be "based exclusively upon the record"[1]. Terramar will provide documentation to the contrary.

7. Terramar has questions and comments regarding the Compliance section, the GHG section, Air Quality section, Waste Management section, Worker Safety section, Soil and Water section, Land Use section, Noise and Vibration section, and Visual Resources section of the RPMPD.

1. Comments on Project Description

Page 2-4 states; "*Once operational, the plant will employ approximately 14 full-time workers*" giving the appearance that the CECP will employ new positions. CECP creates no new employment for operations. These employees will transfer from the Encina Power Station workforce as stated on 6.2-13 in the Air Quality Section of the RPMPD. This should be clarified.

Page 2-4 states CECP objectives as, "*Meets the expanding need for new, highly efficient, reliable electrical generating resources located in the load center of the San Diego region*" and, "*Improves San Diego electrical system reliability through fast starting generating technology, creating a rapid responding resource for peak demand situations and providing a dependable resource to backup less reliable renewal resources like wind generation.*"

[1] RPMPD, Introduction, p.1-1

Terramar points out (once again) that San Diego Gas & Electric (SDG&E) the local utility has chosen not to offer CECP a contract to perform the stated objectives.

Page 2-5 states, *"The only new infrastructure requirement for CECP is the use of California Code of Regulations (CCR) Title 22 reclaimed water as the CECP's raw water source.*"

Terramar points out that the RPMPD omits new infrastructure required by CECP including:

A. a new desalination plant (a "created" coastal dependence use)
B. a new SDG&E switch station.
C. a path for the Coastal Rail Trail

Referring to the CECP Page 2-5 states; "*Significantly reduces the volume of seawater used for once-through-cooling at the existing Encina Power Station by facilitating the retirement of existing Units 1, 2, and 3.*

Staff never compared intake going forward. Encina intake for 1-3 will terminate by 2017 or before, as stated by NRG (whether or not CECP is built). CECP could continue into the future for at least 40 years, making the actual intake for CECP much larger than Encina 1-3.

Per Terramar's Opening Brief Page 13, docketed August 19, 2010 it states:

> *If we take the year 2015 as the starting point for the calculation, and calculate the intake for each facility into the future, mathematics tells us that the impacts from the CECP are much greater.*
>
> *Encina 23.6 mgd x 365 days x 2 years = 17,228,000,000 g per expected life*
> *CECP 4.32 mgd x 365 days x 40 years = 63,072,000,000 g per expected life*
>
> *Units 1,2,and 3 are barely used anymore, and it has been shown that actually the new desal will use more water than Units 1-3 historically.*

CECP will not reduce the volume of seawater drawn for a "once through-cooling" type use. CECP will increase the cumulative negative effects of its once through-cooling type use, as shown in our example.

Terramar recommends the Committee reevaluate the CECP project based on cumulative negative effects "created" by a "once through cooling" type use.

> Page 2-5 states, "*Meets applicable laws, ordinances, regulations, and standards (LORS) of the California Energy Commission, City of Carlsbad, and other agencies.*

Terramar points out that the CECP violates Laws, Ordinances, Regulations and Statutes (LORS) and two overrides have been declared by the Energy Commission.

2. Comments on CEQA Cumulative Analysis in the RPMPD

Terramar found inconsistencies in the "CEQA Cumulative Analysis" performed by CEC Staff. Terramar requests that these inconsistencies be addressed and corrected.

> *A project may result in a significant adverse cumulative impact where its effects are cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects*. (Cal. Code Regs., tit. 14, § 15065(a)(3).)

A. Currently the RPMPD treats the shutdown of Units 4 and 5 both "a probable future event" and a "speculative" event.

B. As the shutdown of Units 4 and 5 "may result in a significant adverse cumulative impact where its effects are cumulatively considerable" the Committee must make a decision whether the shutdown of Units 4 and 5 is a "probable future event" or a "speculative event".

Throughout the RPMPD the shutdown of Units 4 and 5 are handled as "speculative" and other times as a "probable future event". The Committee must decide what shutdown event is proper and make it consistent throughout the RPMPD.

i. If it the shutdown of 4 and 5 is a "speculative" event as noted in the following excerpts from the CECP record, then the Committee must invalidate the overrides, as they would be based on a "speculative" need.

The RPMPD states at least five times that the shutdown of Encina Units 4 and 5 is speculative:

Intervenors, including Terramar and the City of Carlsbad, challenge this approach, largely on the ground that the shutdown of Units 4 and 5 is a certain, foreseeable event. Their reasoning is essentially that the CECP will need to withdraw water from the Agua Hedionda Lagoon, thus causing impingement, entrainment, and cumulative impacts, and may conflict with the State Water Resources Control Board's recently adopted policy on Once

Through Cooling (OTC).4 (Terramar Opening Brief, pp. 7-15; City of Carlsbad's Opening Brief, pp. 2-3, 7, 28-29, 47, 72.)
For present purposes, we note that the evidence establishes that the CECP is air cooled and will not use OTC or require additional water from the Lagoon, and that the potential shutdown of EPS Units 4 and 5 is a speculative matter, which is not part of the present project. (02/24/10)

The State Water Board's OTC Policy does not require the shutdown of ESP units 4 and 5, and the closure date for those units is indeterminate
7.2-14 Soil and Water Resources, RPMPD

Uncontroverted evidence further establishes that any future shutdown of EPS Units 4 and 5, as well as the construction of the Coastal Rail Trail, are also imprecise potential events which currently defy meaningful analysis.
8.4-9 Noise and Vibration, RPMPD

Intervenors' argument fails to take into account the fact that removal of EPS is not imminent or even planned. State policy calls for the eventual elimination of OTC projects such as EPS; that policy, however, is not directed at such projects' visual impacts but rather at the environmental effects, primarily biological, of OTC. The eventual shutdown of EPS will not necessarily result in its removal
from the landscape. The evidence shows that units 4 and 5 of EPS may operate for many more years.
8.5-43, Visual Resources, RPMPD

During the February, 2010 hearings, CEC staff stated that the shutdown of Units 4 and 5 was speculative:

MR. THOMPSON: Your discussion of cumulative impacts. Do you have a list of those projects that you evaluated for their cumulative impacts?
MS. BLAIR: Yes, provided -- that second paragraph.
MR. THOMPSON: So that would be the highway I-5 widening project, and the desal plant. Only those two?
MS. BLAIR: That's correct.
MR. THOMPSON: I take it then you did not evaluate the prospective potential shutdown of all Encina units?
MS. BLAIR: With the retirement of units 4 and 5, at the time I conducted my analysis, was too speculative to be substantively considered in the cumulative scenario.
However, I discussed the potential retirement of units 4 and 5 with the National Marine Fisheries Service, Fish and Wildlife Service and Fish and Game, and decided to address this retirement in condition of certification bio- 9, which would require a new agency consultation if and when there were a proposal to fully retire Encina.

Page 266-267 Hearing Feb. 4 2010 Biological Resources CEC Staff Witness H. Blair

CEC Staff in their Opening Brief stated that the shutdown of 4 and 5 was not part of the project and not evaluated as part of the project:

In response to the Committee's query in its Briefing Order, the shutdown of EPS units 4 and 5 is not part of the project and, therefore, is appropriately not evaluated as part of the project. Unlike the shutdown of Units 1-3, the shutdown of units 4 and 5 is not a consequence of this project.
Staff's Opening Brief page 4 Aug 2010

The Applicant stated (after the addition of conditions Land 2 and Land 3) that Units 4 and 5 may run "forever" at the Sept. 13, 2011 Committee Conference:

MR. McKINSEY: ... And I could even indicate that as we have indicated, in all likelihood Units 4 and 5 are going to operate forever and certainly into the future with no deadline for those.
Page 34, Sept. 13, Transcript of Sept. 13 Committee Conference

If the shutdown is a "speculative" event then Terramar requests the Committee reverse the overrides. As Mr. Sparks stated at the Dec. 12 Carlsbad Hearing, Units 4 and 5 would meet the need.

MR. THOMPSON: So the -- if 231 megawatts are
needed and 500-plus megawatts are provided by 4 and 5 would I correctly
conclude then that there is no need for
additional -- a third power plant at the -- there's no need
for the CECP because that capacity is being provided by
Encina Units 4 and 5?
MR. SPARKS: If Encina Units 4 and 5 continue to
operate through 2021, yes, they could meet the need.
Page 61 Dec. 12, 2011 Carlsbad Hearing

ii. If the shutdown of 4 and 5 is a "future probable event", then CEC staff must complete CEQA cumulative analysis in all project areas of the Carlsbad Energy Center Project (CECP).

The docketed quotes below confirm that CEC staff has not prepared CEQA cumulative analysis of the shutdown of 4 and 5 in all project areas:

MR. THOMPSON: Mr. Monasmith, maybe you can help me out here, as the Project Manager. Was there a point in time when you directed your staff, for example, to consider a list of cumulative projects and what was on that list?

MR. MONASMITH: Yes, there's a whole range of cumulative scenarios for reasonably foreseeable events that any one of the 21 technical analyses would have considered. were a number of reasonably foreseeable future actions that were considered. At the time that the FSA was written, it wasn't the determination, at least -- and then upon staff review, that 4 and 5 retirement stipulated in the November 29, 2009 State Water Board draft policy was considered reasonably foreseeable at the point that we wrote it last spring. So no, it was not in the analysis, as you can read, in terms of the cumulative.
MR. THOMPSON: Because some of the sections reflect it and some of them don't. So, that would explain things?
MR. MONASMITH: Correct.
MR. THOMPSON: One last question. Again, Mr. Monasmith, did you revise that list after November to include --
MR. MONASMITH: The FSA was published November 9, and certain instances were put into an errata in terms of air quality. But we did not file an errata for water to account for events that had occurred after we published on November 3.
MR. CONWAY: I'm looking at our cumulative analysis for the water supply. And we do account for the closure of EPS Units 1 through 3. And I would say that was probably the more likely cumulative analysis at the time.
MR. THOMPSON: Understand.
MR. CONWAY: And we have been in contact with the Regional Board and so forth, so.
MR. RATLIFF: I would just add that, I mean,we've considered the potential shutdown of units 4 and 5 in, as you've suggested, in some of the sections of our analysis. And even included conditions, for instance, in biology, in the biological resources section regarding that. But, we did not consider it to be a cumulative impact that would go into the cumulative impact analysis because when our sections were prepared there was no proposed policy.
Page 231-234 of Testimony Feb. 4, 2010 hearing. Soil and Water Resources, Panel Witnesses M.Conway (CEC)

CEQA Requirements
Cumulative impacts analysis assesses the impacts that result from the proposed project's incremental effect viewed over time, together with other closely related past, present, and reasonably foreseeable future projects whose impacts may compound or increase the incremental effect of the proposed project. (Pub. Resources Code § 21083; Cal. Code Regs., tit. 14, §§ 15064(h), 15065(c), 15130, and 15355.)
RPMPD, Air Quality, 6.2-6

CEC Staff and Staff Counsel make it very clear that cumulative impact analyses have not been completed for all sections in the project. In fact, in

the RPMPD, Land Use Section, pages 8.1-29,30 it lists all of the cumulative impacts projects of note. The shutdown of Units 4 and 5 are not on the list.

Terramar brought this issue to light during the April 19, 2012 RPMPD Hearing in Carlsbad, Ca. Hearing Officer Kramer stated that the cumulative analysis was completed for the "probable future event" of the shut down of Units 4 and 5 on page 8.1-26 of the RPMPD.

HEARING OFFICER KRAMER: Well, all I can do is point you to a discussion that was added to the -- to the Land Use, page 8.1, S26 (phonetic). And that discusses the potential environmental impacts arising from Conditions Land 2 and Land 3. In other words, what happens with the -- what might happen for the tear-down and redevelopment of the Encina site. It -- it does describe the operational impacts from replacement uses as speculative.
April 19 Hearing, pages 81-82

The cumulative analysis on page 8.1-26 refers only to the demolition of Encina Units 4 and 5, and not the shutdown of Encina Units 4 and 5.

Therefore the cumulative analysis for the shutdown of Encina Units 4 and 5 has not been completed for all project areas.

Conditions Land 2 and Land 3 support the removal of Encina to become "probable future event". CEQA requires this "probable future event" to be analyzed in cumulative impacts. CECP must be evaluated as a stand alone structure and not an "incremental additional visual feature".

Terramar insists CEC needs to produce a CEQA cumulative analysis of visual resources based on Land 2 and Land 3 and how the removal of Encina would make the CECP a stand alone plant affecting future visual for landowners. Alternatives Section page 3-8 supports Terramar's statement cumulative analysis has not been completed for visual features.

This is because the CECP site already contains the existing EPS and the associated stack, with no current plan for removal of such infrastructure, and only incremental additional visual features form the proposed project.
RPMPD, Alternatives Oaks North3-8

Land 2 and Land 3 make the removal of Units 4 and 5 "a probable future event". The RPMPD discusses the removal in terms of visual cumulative analysis on page 8.1-28:

Visual Resources. Demolition of the 400 foot exhaust stack and 200 foot tall

power block enclosure will have a positive effect on the visual environment. No significant impacts are expected. (Ex. 229, p. 26.)

The visual analysis is based on the removal of Units 4 & 5 but the analysis completely skips the negative visual effects from CECP once Encina is removed.

Intervenors City of Carlsbad, Carlsbad Redevelopment Agency, Terramar and Power of Vision contend that, in light of the potential for future removal of EPS and conversion of the property to non-industrial uses, CECP will contribute to a cumulative visual impact because it will, in effect, prolong the industrial use of the site. Intervenors' argument fails to take into account the fact that removal of EPS is not imminent or even planned
RPMPD, Visual Resources, 8.5-43

Interveners have contended all along that with the removal of Encina, the cumulative visual impacts from CECP are enormous. In addition, Interveners have pointed out that with the widening of the I-5 the cumulative visual impacts would be gigantic with the loss of the existing berm and trees.

The cumulative visual effect introduced by the proposed CECP in combination with the I-5 Widening Project would thus nullify the less-than-significant visual impact discussed in this Decision for KOPs 2, 3, 4 (north shore of lagoon), and 6 and 7 (Highway I-5), since that determination was dependent upon the presence of the existing berm, existing landscape screening, and planting of additional infill landscape screening. Absent mitigation, it currently appears that a significant cumulative visual impact could occur in the absence of modification to either the I-5 Widening Project alternatives, the CECP, or both. In addition, the 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 which states: "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."
It would also not be consistent with the City of Carlsbad Scenic Roadways Goa A which is to... "preserve and enhance the visual …characteristics of the local community through sensitive planning and design of transportation and utility corridors," and the City's Scenic Roadway Policy C.2 which identifies this portion of I-5 as a "Community Scenic Corridor."
Intervenors City of Carlsbad, Carlsbad Redevelopment Agency, Terramar and Power of Vision agree that the significant impacts described above would occur, but contend that with the widening of I-5, the space necessary for screening will be eliminated and that effective mitigation will therefore be impossible. City argues further that Condition of Certification ***VIS-5***

constitutes impermissible "deferred mitigation" because it leaves determination of final mitigation details until the configuration of the widening project is known.
RPMPD, Visual Resources, p. 8.5-47

Terramar asks the Committee, if the shutdown of Units 4 and 5 is a "probable future event" then complete the cumulative analysis based on the "probable future event(s)" of the shutdown and removal of Encina. Also the widening of the I-5 should be added to the cumulative analysis.

iii. Encina would no longer be coastally dependent if the shutdown of OTC is considered a "probable future event".

If the shutdown is a "probable future event" then Encina would no longer be coastally dependent. If Encina is not coastally dependent, CEC could no longer call the CECP an expansion of a coastally dependent use.

Terramar contends CECP is an air cooled plant that can be placed anywhere and has never been coastally dependent.

If CEC decides that the shutdown is a "probable future event" then Encina's loss of coastal dependence should be addressed in relation to the CECP.

3. Terramar opposes the CECP Committee's decision to declare the Energy Commission the Fire Code Official.

Terramar opposes the Committee's decision to declare the Energy Commission the Fire Code Official. "Fire code official" is defined as "[t]he fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative." (24 Cal. Code Regs., § 202.)

The RPMPD states that the CEC's role is that of "a planning and regulatory role" and is not the definition of the "fire code official". To repeat again the "fire code official" is defined as "[t]he fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative." (24 Cal. Code Regs. § 202.) Only the Carlsbad Fire Chief is the authority charged with the administration and enforcement of the code.

A. The Energy Commission is unable to "enforce" the code.

The Energy Commission is located in Sacramento, Ca. As the "Fire Code Official" there is no way that the Commission could enforce the Fire Code. Enforcing the code is one of two significant duties of the "Fire Code Official" The Carlsbad Fire Chief is able to perform both significant duties.

B. The Energy Commission names the Carlsbad Fire Dept. as the code enforcer in Appendix A.

40 CFR Part 70 Title V: Federal permit. Title V permit application is required within one year of start of operation. Permitting and enforcement are delegated to SDAPCD.
RPMPD, Appendix A-1

Local (or locally enforced)
CaliforniaFire Code 2007
The fire code contains general provisions for fire safety, including requirements for proper storage and handling of hazardous materials and listing of the information needed by emergency response personnel. Enforced by the Carlsbad Fire Department.
RPMPD, Appendix A-40

National Fire Protection Association standards These standards provide specifications and requirements for fire safety, including the design, installation, and maintenance of fire protection equipment. Enforced by the Carlsbad Fire Department.
RPMPD, Appendix A-40

In the RPMPD the Commission names the Carlsbad Fire Department three times as the enforcer of the Code.

C. Therefore the Carlsbad Fire Chief is the "Fire Code Official" and responsible for deciding the fire lane width for both the CECP "pit" and the "upper ring road".

The Commission is incapable of fulfilling the definition of the "Fire Code Official". The "Fire code official" is defined as "[t]he fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative." (24 Cal. Code Regs., § 202.)

The local fire department will continue to provide fire services to the project; ours is a planning and regulatory role.
Worker Safety, p. 6.4-11

The Committee is obligated to comply with the Carlsbad Fire Chief's assessment requiring a 48-50 ft. fire lane in the "pit and a 25 ft. upper "ring" road at the CECP site or make an override of the fire code.

With the widening of the I-5 interstate a portion of the CECP upper 'ring' road will be eliminated as noted on pages 6.4-6,7 from Worker Safety state;

The loss of the existing above-grade "ring" road is offset by the required below-grade perimeter road for emergency response vehicles that will be built to code specifications under Condition ***WORKER SAFETY-6****.*

The Committee is obligated to correct the RPMPD Worker Safety Section and comply with the requirements of the Carlsbad Fire Chief. These corrections would include the Findings of Fact and Conclusions of Law.

The RPMPD correctly discusses recent fire incidents that occurred at California power stations;

The evidence includes a summary review by Staff of accidents, fires, and a worker death that occurred at Energy Commission-certified power plants in the recent past. Staff asserts these events were due to the failure to recognize and control safety hazards and the inability to adequately supervise compliance with occupational safety and health regulations. (Ex. 222, pp. 4.14-10 – 4.14-11.)
Worker Safety, p. 6.4-2

The RPMPD points out that these recent incidents were due to "*the failure to recognize and control safety hazards*". The Carlsbad Fire Chief has tried desperately to "*recognize and control safety hazards*" that could occur in the "pit" during a fire fighting incident. He recognizes the need to require a 48-50 ft. fire lane to avoid failure.

It is difficult enough to ask your firefighters to battle such a dangerous type of fire. How can CEC require the Carlsbad Fire Chief to respond to a fire or explosion at the CECP knowing the excess danger presented by a fire lane that is too narrow? They cannot and should not. Terramar asks the Committee to comply with the access requirements stated by the Carlsbad Fire Chief, the "Fire Code Official", and provide a 48-50 fire lane in the "pit" and a 25 ft. fire access ring road.

4. Terramar provides comments concerning errors in the Alternatives Section of the RPMPD. Terramar suggests the section needs revision and reevaluation based on accurate information.

The CECP site is no longer zoned for a power plant. The evaluations comparing CECP site zoning with that of the Maerkle and Oaks North alternative sites need reanalysis.

Regarding the Maerkle alternative site, the RPMPD states:
Therefore, this site would generate an increase in land use compatibility impacts when compared to the CECP, which is currently zoned for and contains a power plant.
RPMPD, Alternatives, Maerkle p 3-5

Regarding the Oaks North alternative site, the RPMPD states:
Furthermore, the Oaks North site zoning designation would have to be changed from Planned Industrial to Public Utility by the City of Carlsbad in order to accommodate a facility like the CECP.
RPMPD, Alternatives, Oaks North3-8

RPMPD Alternative section discusses the merits of the CECP producing power for SDG&E. CEC needs to recognize that as of yet no contract has been offered by SDG&E. Therefore, it is inaccurate to state that the power from CECP would be sold to the SDG&E service area.

CECP will produce electricity for the SDG&E service area while consuming less fuel and discharging fewer air emissions for each energy unit generated when compared to other existing, older fossil fuel generation facilities.
RPMPD, Alternatives, 3-20

If the power is not sold to SDG&E then it could be sold to Arizona or Nevada making the CECP increase air emissions/MW in California.

CPUC is suggesting SDG&E buy power from the Sutter Plant because there is no contract for the power. This shows that if CECP is built without a contract either rate payers could be forced to buy CECP power or it will be sold out of the San Diego region or out of state leaving the GHG emissions in the state of California.

There is nothing to stop CECP from selling out of state and therefore violating the California Global Warming Solutions Act of 2006. [Assembly Bill 32, codified in Health & Saf. Code, § 38560 et seq. (hereinafter AB 32).].

It is fair to say that CECP is more efficient than EPS Units 1-5 in GHG emissions. But if CECP is used to power other states in the grid, then CECP will increase GHG in California.

The RPMPD Alternatives Section, Findings of Fact #5, page 3-21, suggests that "*reduced capacity generator at the proposed CECP site might eliminate the identified Land Use impacts but would not make full use of the existing infrastructure"*.

Making *"full use of the existing infrastructure*" is not supported by the Coastal Act. The purpose of the Coastal Act has never been to continue and increase power plants in the same locations for eternity just because infrastructure is available. The Coastal Act requires that adverse impacts be minimized.

Section 30253 Minimization of adverse impacts
New development shall do all of the following:
(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30001.5 Legislative findings and declarations; goals

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

Section 30413 State Energy Resources Conservation & Development Commission

(d) (6) The degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division.

The Committee's responsibility is to minimize the adverse affects created making the smallest impact "needed" based on the Coastal Act.

During the December 12, 2011 Hearing California Independent System Operator (CAISO) testified that the Encina sub area would "need" 20 Mega Watts (MW) if the Encina Plant were to shut down. This testimony was based on a projected procurement CAISO document that is being vetted at the California Public Utilities Commission (CPUC). Many interested parties are taking part in evaluating this document including the CPUC establishing that the document is still speculative. A slide presentation of the document was presented to the CEC. At the April 27 Comment Conference, CAISO confirmed the document is already going through revisions.

The CAISO document addressed a 20 Mega Watt (MW) "need" in the Encina sub area if Encina were to shut down. The "need" would increase to 50 MW if the Poseidon Desalination Plant is built. The City of Carlsbad testified Dec. 12 that they could accommodate the sub 50 MW need, and they also said that SDG&E had suggested a transmission adjustment could accommodate 20 MW need.

The Committee has generated two overrides based upon this speculative CAISO document, when the actual "need" in the Encina sub area has been calculated at approximately 50 MW. The City has testified that they could meet the 50MW need.

Terramar suggests the "No Project" alternative is by far the superior alternative.

- The City and SDG&E will meet the "need" for the Encina sub area and minimize the adverse impacts in the Coastal Zone.
- The Committee could circumvent overriding LORS.
- The CECP (a non-coastal dependent industrial plant) would not violate the Coastal Act.
- The ratepayers would not pay for another unneeded power plant (like Sutter).

- SDG&E doesn't want the project.

5. The CECP and its unnecessary desalination unit violate the Coastal Act.

The CECP is an air cooled plant that has the ability to be constructed and operated anywhere. In the City of Carlsbad's "Initial Comments on the Revised Presiding Member's Proposed Decision", page 4-5 it states:

The fatal flaw of the RPMPD with respect to coastal impacts is that it assumes coastal dependency without ever meeting the test of PRC section 30101.
Why? First, because the proposed power plant does not meet the legal test of section 30101, that section is simply ignored. Instead the RPMPD jumps directly to PRC section 30260. That section cannot be read in isolation and normal statutory interpretation requires the two sections to be read in harmony. The RPMPD does not do that. By its terms, section 30260 applies only to coastal-dependent industrial facilities. The RPMPD assumes that section 30260 is being applied to a coastaldependent industrial facility. Each ofthe critical provisions of that section applies to coastaldependent industrial development; but none of them makes industrial development coastally dependent. To paraphrase Justice Roberts in arguments before the United States Supreme Court in National Federation of Independent Business v. Kathleen Sebelius, Secretary of Health and Human Services, "Can the government create commerce in order to regulate it?" The same can be said for the RPMPD's assertion that the proposed power plant is coastal-dependent. "Can the Energy Commission create a coastal-dependent project in order to approve it?"

The RPMPD creates a coastal-dependent use, which does not meet the definition of the law, based in part upon the assumption that placing the CECP on the site of the existing EPS, which is coastal-dependent because it uses once-through cooling, makes the CECP coastal-dependent. It then extends the industrial use of this site for many years beyond the realistic life of the EPS. The RPMPD is inappropriately using the EPS as justification for the CECP's inconsistencies with the Coastal Act.

Section 30260 Location or expansion
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. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Terramar appeals to the Committee to reevaluate the CECP and its relationship with the Coastal Act provisions. CECP does not require "*a site on, or adjacent to, the sea to be able to function at all*".

Section 30101 Coastal-dependent development or use
"Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.

A year after submitting their AFC, the Applicant amended the AFC to add a desalination unit to the project. This desalination unit was an alternative created by the Applicant for a water supply.

The desalination unit was not introduced to the project because the City refused water to the project. The facts show the City's reclaimed water was fully subscribed in the summers and the City offered the Applicant the opportunity to expand the reclaimed water facility. This is supported by the Applicant's docketed response into the record on October 27, 2007. The Applicant states the "*City has indicated there are several options available to meet the reclaimed water needs of CECP*". The Applicant clearly states that the City offered the Applicant "*additional capital improvements to the reclaimed water system"* in their "Response to Data Adequacy Review of the Application for Certification for the Carlsbad Energy Center Project Data Adequacy Supplement."
On page 19 it states:

If modeling shows that flow and pressure design standards will not be met with the addition of the CECP (thus affecting existing customers), the City has indicated there are several options available to meet the reclaimed water needs of CECP and other reclaimed water users. These options include but are not necessarily limited to: additional capital improvements to the reclaimed water system; the purchase of reclaimed water from an adjacent water district; the construction of additional reclaimed water storage capacity; or some combination of these three options.
In Response to Data Adequacy Review of the **Application for Certification** for the **CARLSBAD ENERGY CENTER PROJECT DATA ADEQUACY SUPPLEMENT A (07-AFC-6)**, p. 19, October 23, 2007

In addition, the City sent James W. Reede, Jr. (Ed.D, Energy Facility Siting Project Manager, CEC) a letter of concerns regarding the project. Issue #47 on page 8, Carlsbad Energy Center Project (07-AFC-6)- City of Carlsbad Planning Department's Issues of Concern, Oct. 24, 2007 states regarding the recycled water capacity:

47. The City does not have adequate recycled water production capacity to satisfy the process water demands of the CECP in the peak summer months. The applicant would need to provide solutions, acceptable to the City, to provide adequate recycled water supplies throughout the year. The project would be responsible the actual connections and associated costs, as well as the costs associated with improvements necessary to satisfy the recycled water demands of the project. Any additional improvements required to provide adequate recycled water supplies would need to be analyzed as part of the overall project review.

The City's October 24 letter speaks to the City's offer to the Applicant to expand the recycled water facility to meet the water needs of the CECP.

At the RPMPD Comments Conference April 19, 2012, both Mr. Ratliff and Mr. McKinsey stated that the City refused water. (Transcript pages 49-52)

MR. RATLIFF… But the -- the law regarding the application of the Coastal Act, which I believe all witnesses testified consistently to, is that if a facility complies with Chapter 3 of the Coastal Act it doesn't matter whether it's coastally dependent. And that was also the testimony of Mr. Faust (phonetic) who was the city's witness on this, and we agree with that. Secondarily, the reason the staff believed that it as correct in determining that this was a coastally dependent facility, for the sake of argument, and the city did argue that it didn't comply with Chapter 3, was that the city has informed the applicant by a letter, which is – is in the record and has been discussed, that there would be no water coming from the city, and that there would be no available water for the project. This was a rather poignant occurrence in the unfolding of this case because at that point I told the staff -- or told the applicant we didn't want to waste any more time on the project since they didn't have any water. It was subsequent to that that -- that the applicant filed basically what has been called the pure amendment, which basically amended the project to use an osmosis system to obtain its water from the intake system that would be used by the facility, and also used by Units 3 and 4. So that became the alternative use and the only viable use, as we understood it, for the project to obtain its water. And in that sense we saw it also as being coastal dependent.
And those -- for -- those are the reasons, not the de-sal plant itself, but actually the -- the need to get water from some source other than the city, that staff viewed this as a coastal dependent facility.
HEARING OFFICER KRAMER: Mr. McKinsey?
MR. MCKINSEY: A couple of -- of comments. First the -- Mr. Ratliff's characterization is very accurate as to the unfolding of the events. The intent of the applicant has been and remains, actually, to use reclaimed water if it's available. The decision in the project, it's essentially being permitted to do either. And -- and I know we've made this comment at plenty of the hearings and emphasized that. But the – the project went to using the purified water, purified ocean water for the very reason that it was informed that there wasn't water available. And -- and yet it also wanted to maintain the ability to use it. And the way it's set up, they -- they have to commit to one or the other when they do that final design on the plan, and that's when that decision will ultimately be made. This decision preserves the ability to purify ocean water as the source of -- of makeup feed water and -- and other water uses on the site. The -- and also it is very correct that there is

no coastal dependency requirement for this project. Coastal dependency is a factor, I think, that provides presidin members proposed decision, quotes the exact correct language and correctly analyzes that. Similarly, the applicant is -- and we can confirm this in our written comments, but is very comfortable that the -- that both the decision, as well as the record, is complete on Coastal Act compliance, and -- and therefore, you know, is satisfied that that area is met, as well.
Pages 49-52, RPMPD Committee Conference, April 19, 2012

Terramar refutes Mr. Ratliff's and Mr. McKinsey's claim that water was withheld by the City. Terramar is supplying the Committee with the quotes from the Applicant's October 23 Data Response document and the City's Oct. 24 Concerns letters. These support Terramar's claim that the City offered the Applicant the ability to make capital improvements to the reclaimed water system in order to receive the necessary reclaimed water for the project.

It is certainly not the job of the CEC to promote financial decisions for Applicants.

Based upon the evidence before us, we find and conclude as follows:
4. Reclaimed water necessary for CECP's daily industrial needs is not currently available without a significant expansion of the City's wastewater treatment infrastructure.
RPMPD, Soil ad Water Resources, 7.2-14

As the record makes clear, the water needs of the proposed power plant can be met without being located adjacent to the sea. It can be met if the applicant chooses to pay for the costs of expanding the existing reclamation plant. Development has always been a privilege in this State and developers, even power plant developers, must pay the reasonable costs to exercise that privilege. In this case, the answer is simple; if the applicant wishes to build a power plant that requires reclaimed water, it should pay the reasonable costs for expansion of the plant that produces that water. The fact that it quarrels with the costs or the amount of expansion is immaterial; those decisions are not its to make.
Page 5, City of Carlsbad, Initial Comments on the Revised Presiding Member's Proposed Decision, April 19, 2012

The desalination plant should be denied by the Committee as it is in no way coastally dependent and appears to violate California Constitution, Article X, Section 2 as an unreasonable use. It also violates the Coastal Act due to the unnecessary impingement and entrainment that will occur due to the desalination plant with the shutdown of Units 4 and 5.

California Constitution, Article X, section 2 requires that the water resources of the state be put to beneficial use to the fullest extent possible and prohibits the waste, unreasonable use, or unreasonable method of use of water.
Soil and Water, 7.2-12 RPMPD

The RPMPD fails to embrace the fact that the City made the offer for the Applicant to expand the recycled water facility. There is no reason for the Applicant to construct a desalination plant when they have the ability to expand the recycle water facility. The RPMPD is incorrect when it states:

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, Land Use, 8.1-7

Thus Terramar concludes that an unnecessary desalination plant would violate these laws:

(Title 16, United States Code, sections 1531 et seq.; Title 50, Code of Federal Regulations, part 17.1 et seq.)
Designates and provides for the protection of threatened and endangered plant and animal species and their critical habitat. The administering agency is USFWS.
RPMPD Appendix A-5

Porter-Cologne Water Quality Control Act California Water Code, Division 7, section 13142.5(b)
Requires coastal industrial installations that use seawater for cooling, heating, or industrial processing to implement best available site, design, technology, and mitigation measures to minimize intake and mortality of all forms of marine life. The administering agency is the SWRCB.
RPMPD, Appendix A-6

California Constitution, Article X, section 2
Requires that the water resources of the state be put to beneficial use to the fullest extent possible and states that the waste, unreasonable use, or unreasonable method of use is prohibited.
RPMPD, Appendix A-24

California Water Code, section 13550
Requires the use of recycled water for industrial purposes subject to recycled water being available and upon other criteria such as the quality and quantity of the recycled water are suitable for the use, the cost is reasonable, the use is not detrimental to public health, and the use will not impact downstream users or biological resources
RPMPD, Appendix A-24

Title 23, California Code of Regulations
Requires the RWQCB to issue waste discharge requirements specifying conditions for protection of water quality.
RPMPD, Appendix A-25

Terramar requests that the Committee make a determination to deny the desalination plant as part of the project. Terramar also requests the Committee make a new determination that the CECP is not coastally dependent based on the Coastal Act.

6. Terramar challenges the RPMPD override decisions which were to be "based exclusively upon the record"[2]. Terramar will provide documentation to the contrary

> *This Decision is based exclusively upon the record established during this certification proceeding and summarized in this document.*
> Introduction, p.1-1

In the "Conclusion of Law" section of Overrides the Committee states:

1. The CECP facility is required for public convenience and necessity. There are not more prudent and feasible means of achieving public convenience and necessity
RPMPD, Overrides, 9-10,11

Terramar would like to ask the Committee, "What is the purpose of the overrides when the CECP has already been denied a PPA by SDG&E two times?" The Committee is well aware that the CECP project has submitted to SDG&E twice for a PPA and has been turned down both times. With this knowledge, the Committee is making overrides despite the fact that the RPMPD states, "*Without a PPA, a project is unlikely to be constructed."*

4. Need for the project
The Energy Commission does not generally consider the level of need for a project. Rather, it reviews proposals submitted for environmental impacts and compliance with LORS. Other regulatory agencies and market forces then determine whether an approved project will go forward. Only if the market decides that it is likely that a project will be able to generate sufficient revenue from sales of its electricity to cover its costs of construction capital and operating expenses, (fuel, wages, etc.) will a project be built. As a practical matter in these times, that assurance comes in the form of a power purchase agreement (PPA). Without a PPA, a project is unlikely to be constructed.
RPMPD, Override Findings, 9-5

The Committee has not defined "public convenience and necessity" for this project. Terramar asks the Committee, "Is it the Encina sub area need of 20-50 MW of power with the shutdown of Units 4 and 5"?

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[2] RPMPD, Introduction, p.1-1

If that is the case, the record shows that the City offers to meet the need and the overrides become unnecessary.

MR. THERKELSEN: Excuse me. Excuse me. This is Bob Therkelsen. One thing that I would like to add on that is the City of Carlsbad specifically sent questions in the CPUC proceeding and asked the question about that 20 megawatt deficiency and how they would respond to that. And in our exhibit, I think it's 455, responses from SDG&E, they indicated they felt that the can be corrected by $1 million transmission system upgrade. So they had identified a transmission fix for that. That just was their response
Pges 84-85, Dec 12 Hearing

In the city discussions with San Diego Gas and Electric we have talked with them about if there's a long term need for local reliability sub-50 megawatts, that would be within the city's purview. We would absolutely consider putting in a peaker plant to help support that. We recognize the energy demands of the desalination plant. And so we're not unwilling to help be part of the solution, but it was in the context of a sub-50 megawatt and not a 500 megawatt plant.
Joe Garuba testimony, page 92, Dec. 12 Hearing

If the need is greater than the 50 MW Encina sub area, Terramar asks the Committee, What is the need?" The record has not established what the need is. In fact the RPMPD states in the Override Findings that CEC is "not entirely certain" what the need is.

The City and other opponents and even Commission staff characterize the present state of the evidence as not entirely certain as to the actual amount of generation that will ultimately be required. The opponents ask that we withhold a decision until there is more certainty about the need for CECP's generation. Staff, while acknowledging the uncertainly, recommends that we go forward and approve the project so that it is ready to go forward if and when the need for its services is confirmed.
RPMPD, Overrides, 9-8

Terramar has spent the last four years opposing this plant. We wish to emphasize our disbelief that the Committee would use the ultimate power of overrides to certify a plant based on a speculative and uncertain need for a plant that has been turned down for a PPA twice.

CAISO testified that Encina Units 4 and 5 could satisfy the "need". Terramar suggest that this is a good solution until it can be established that a "need" even exists and what it is.

MR. THOMPSON: So the -- if 231 megawatts are needed and 500-plus megawatts are provided by 4 and 5 would I correctly conclude then that there is no need for additional -- a third power plant at the -- there's no need for the CECP because that capacity is being provided by Encina Units 4 and 5?
MR. SPARKS: If Encina Units 4 and 5 continue to operate through 2021, yes, they could meet the need.
Page 61 Dec. 12, 2011 Carlsbad Hearing

The docketed CAISO slide presentation based on the report, Policy Driven Planning Deliverability Assessment Results – SDG&E Area, is currently being vetted at the CPUC. The "need" stated in this report for the San Diego Area has already been adjusted and continues to be evaluated. Terramar pleads with the Committee to wait until the "need" has been substantiated. If overrides are to be made, base them on substantiated need.

In the "Conclusion of Law" page 9-10, Override Findings section of the RPMPD, the Committee states that:
The CECP benefits outweigh the significant direct and cumulative impacts identified above.

In Section 2 of this document, Terramar provides evidence that the RPMPD has not completed evaluation of "cumulative impacts". Therefore this "conclusion" cannot be made until evaluation is complete.

7. Terramar questions and comments regarding the GHG section, Air Quality section, Waste Management section, Worker Safety section, Soil and Water section, Land Use section, Noise and Vibration section, and Visual Resources section of the RPMPD.

*1. We adopt Condition of Certification **WORKER SAFETY-8** to require that two operations employees be sent to the plant site while the generator(s) operate.*
Worker Safety, p. 6.4-8

What is the verification of Worker Safety-8?

2. In the San Diego area, the CAISO has "reliability must run" contracts with several old, less-efficient plants in part to provide ancillary services. (Ex. 222, p. 4.1-111.)
GHG p. 6.1-2

There is only one remaining RMR contract in the San Diego area. That is on the black start unit at Encina.

3. Shutting down Encina and South Bay would remove 1,668 MW of generation from the San Diego load pocket.
GHG 6.1-14

South Bay is already shut down.

4. Therefore, we cannot and should not continue adding gas-fired plants ad infinitum. Rather, we will analyze each such project in light of the goals and policies discussed above
GHG 6.1-18

The Sutter Plant would be a good example of this. Terramar asks the Committee to make the CECP another example.

*5. Condition of Certification **AQ-SC5**, integrates and augments the applicant's construction equipment mitigation to mitigate the PM and NOX emissions from the large diesel-fueled construction equipment. This condition, which has been updated from the version in the FSA to the latest Commission-approved version, requires the use of EPA/ARB Tier 3 engine compliant equipment for equipment over 50 horsepower where available, and also includes equipment idle time restrictions and engine maintenance provisions.*
Air Quality p. 6.2-12

Please clarify "where available".

6. Retirement of the South Bay Power plant in the service region city of Chula Vista, is possible in the near future. Therefore, overall power generation at the Encina Power Station is likely to increase, rather than decrease, over the next several years.
Air Quality p. 6.12-13

South Bay is already retired.

***7. AQ-84** On and after the date that Turbine B completes its shakedown period, the three utility boilers described on District Permits to Operate No. 791, 792, and 793 shall not operate. [Rules 20.3(d)(3), 20.3(d)(8) and 21]*
***Verification:** The project owner shall submit to the CPM and the District information that the boiler regulated by this condition are no longer operational, or the steps being taken to ensure that they will not be operated, once Turbine B completes its shakedown period as part of the final monthly commissioning status report (**AQ-80**).*
Air Quality p. 6.2-63

The "or steps being taken to ensure that they will not be operated" should be eliminated from this condition. The Units 1-3 should not be operated at all.

8. Verification: *The project owner shall report the results of filter cake testing to the CPM. If two consecutive tests show that the sludge is non-hazardous, the project owner may apply to the CPM to discontinue testing.*
Waste Management p. 6.6-16

Terramar doesn't agree and requests the tests be done yearly.

9. Copies of the unauthorized spill documentation shall be provided to the CPM within 30 days of the date the release was discovered.
Waste Management p. 6.6-16

Terramar requests that this be reported to local authorities as well.

10. CECP will be remotely operated from the Control Building located within the existing EPS.
Soil and Water Resources, p. 7.2-4

This needs to be corrected that two individuals will be on site when the CECP is operating.

11. The EPS property is zoned for public utility use and has been previously developed in its entirety for industrial uses. Construction of the CECP on the site of an existing industrial property with access to existing power infrastructure, and with limited adjacent sensitive uses, has greater relative merit to development of a power plant at an alternative site. Therefore, the CECP is consistent with Section 30260 of the Coastal Act.
Land Use, p. 8.1-7-8

CECP must first be consistent with Section 30101. CECP does not comply with Section 30101 since CECP is not "*any development or use which requires a site on, or adjacent to, the sea to be able to function at all*." CECP is not consistent with the Coastal Act and Terramar asks the Committee to address this inconsistency.

Section 30101 Coastal-dependent development or use
"Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.

12. EPS property is now restricted by the Carlsbad General Plan from being developed as a power plant site. The current infrastructure is present due to the aging Encina Plant. The Public Resources Code section 30260 states 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.
Land Use, p. 8.1-7-8

Due to the age of Encina this section of the Public Resources Code has already been met and there is nothing that says it must be extended.

13. The CECP, proposed inside the existing boundaries of the EPS site, is consistent with the Coastal Act policy that prefers on-site expansion of existing power plants to development of new power plants in undeveloped areas of the Coastal Zone.
Land Use, p. 8.1-8

There is no other project proposed in the Coastal Zone. So this is an unnecessary and meaningless comparison.

*14. Conditions **LAND-2** and **LAND-3**, added to this project near the end our review, would lead to the eventual removal of existing facilities and redevelopment of the westerly portion of the Encina Power Station site between the railroad tracks and Carlsbad Blvd. We therefore discuss the potential impacts of those activities, albeit at a lower level of detail and recognizing that the City of Carlsbad, not the Energy Commission, will not be the agency approving those activities.*
Land Use , p. 8.1-26

The last sentence of this condition doesn't make sense. Please explain.

15. LAND-3…
Project owner shall seek partners to complete redevelopment of the Encina Power Station according to the Demolition, Removal, and Remediation Plan (DRRP) approved by the CPM pursuant to
***LAND-2**. Upon the permanent retirement of Units 1 through 5 at Encina Power Station, Project Owner shall actively pursue fiscally viable redevelopment of the Encina Power Station. Such pursuit could include selling or transferring the land and facilities to a developing entity or entering into a joint venture with one or more developers. The project owner is not expected to commence demolition and remediation of the Encina Power Station absent a viable and funded redevelopment plan that includes future uses of the site that provide the revenue or funds necessary to pay or secure financing for the costs of demolition and remediation.*
***Verification:** Project Owner shall report to CPM on annual basis the status of the redevelopment efforts at the Encina Power Station. Within 60 days of receiving the report, the CPM shall schedule and hold a public workshop to present the report and solicit public comments and questions*
8.1-36 Land Use

As agreed to by Mr. McKinsey at the RPMPD Comments Conference on April 19, the Applicant has agreed to adding language that confirms that the redevelopment cannot be another power plant.

MR. MCKINSEY: Hearing Officer Kramer, we'd like to respond, I think in a positive way, to one of the comments, which is that there isn't a requirement that future redevelopment not be another power plant. And that's actually not the intent of the applicant at all. And so we're fine with a phrase, some language that says that, that the -- and I've even -- I'll just read it out loud so it's in the record, something that I think would facilitate that. In the sentence where it says "project owner shall actively pursue fiscally viable redevelopment of the Encina Power Station," we could add a phrase that says "that does not include new power generation west of the railroad tracks."
April 19, 2012 Hearing, pages 39-40

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16. NOISE-4 *The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that operation of the project will not cause noise levels due solely to plant operation to exceed an average of 53 dBA L_{eq} measured at monitoring locations M2 or M7. No new pure-tone components shall be caused by the project. No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate complaints.*
Noise and Vibration, p. 8.14-12

Terramar was assured at the February 2010 hearings that M2 would be monitored and so it should state M2, or M2 and M7.

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17. 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.)*
Visual Resources, p. 8.5-48-49

Terramar requests that this be shown in a diagram, providing these distances using the two most popular choices of CALTRANS. The complete area from the pit to the I-5 options have never been proven and this is the responsibility of the Applicant. The Applicant has never provided the affect this new berm will have on the "upper" ring road around the pit and the width of the grade within the pit.

Summary

Terramar wishes to thank the Committee and Staff for all the time and effort put into this project and others for the State of California. This has been a difficult journey for all involved and that is demonstrated by the 4 and ½ years it has already taken.

Though Terramar disagrees with the approval of the CECP, we feel that the Committee will take all of the comments submitted and give them the importance they deserve.

The California Coastline is the number one reason that most people come to this state. It is where people across the country and world come to relax and unwind. The views, the wildlife, the weather, the people are spectacular: no one comes to see a power plant.

Please protect the California Coast by supporting the Coastal Act and all of its regulations.

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
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
aprilsommerlaw@yahoo.com

ENERGY COMMISSION – DECISIONMAKERS

KAREN DOUGLAS
Commissioner and Associate Member
kldougla@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

*indicates change

DECLARATION OF SERVICE

I, Kerry Siekmann, declare that on April 27, 2012, I served and filed a copy of the attached RPMPD COMMENTS. 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 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
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.

Kerry Siekmann

*indicates change