STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

DOCKET
07-AFC-6
DATE 02/09/12
RECD. 02/09/12

In the Matter of:)
Application for Certification for the)
Carlsbad Energy Center Project (CECP))
)

Docket No. 07-AFC-6

Motion of City of Carlsbad and the City of Carlsbad as successor agency
to the former Carlsbad Redevelopment Agency
to Strike Staff Memorandum (Reply Brief) of February 2, 2012

Under the authority of California Code of Regulations 1716.5, the City of Carlsbad and City of Carlsbad as successor agency to the former Carlsbad Redevelopment Agency (hereafter "Carlsbad") hereby file this motion to strike CEC Staff's Memorandum directed to this Committee, dated February 2, 2012. Although styled as a "memorandum", this document is a 12-page, single spaced reply brief that addresses issues raised at the hearings primarily by the Center for Biologic Diversity. It constitutes an unauthorized reply brief and should be stricken.

Hearings on this matter concluded on December 12, 2011. On this date the briefing schedule was determined. The briefs were to be no more than ten pages in length (Tr. 341) and the Hearing Officer determined that "reply briefs didn't seem necessary" (Tr. 262). All parties followed this guidance, including CEC staff, which is considered an independent party to these proceedings.

However, with no prior authorization from the Hearing Officer or notice to other parties, CEC staff filed its "memorandum" on February 2, 2012. Allowing only one party to file a reply brief clearly disadvantages all other parties. Staff's memorandum also violates the fundamental rule that new matters cannot be raised for the first time in a reply brief. The Committee should strike the Staff filing, or, in the alternative, issue an order establishing a schedule for reply briefs from all parties.

While most of the substance of the staff reply brief concerns the greenhouse gas issue, which is addressed by the Center for Biological Diversity, staff also revisits the issue of the need for the CECP. In its memo, the staff treats the CAISO's December 8, 2011 PowerPoint presentation and the testimony of the CAISO witness based on that presentation as a final analysis and the "official CAISO position." (Memorandum, page 5) Staff's position is contrary to oral testimony by the CAISO witness that the report is only final when approved by the CAISO board (TR, December 12, 2012, page 56). In addition, it ignores the disclaimer included in the written transmission assessment report released by the CAISO on January 31, 2012 which specifically states regarding the OTC analysis: "This long-term assessment is preliminary because the official long-term supply and demand outlook is typically carried out under the

CPUC Long-Term Procurement Plan (LTPP) process with significant participation from various stakeholders." (CAISO, 2011-2012 Transmission Plan, January 31, 2012, page 218) Following release of the CAISO's preliminary written report, both SDG&E and the CPUC DRA have expressed concerns and criticisms regarding the preliminary analysis and supporting assumptions.

Staff's unauthorized late filing is improper and severely prejudicial to the other parties. Carlsbad is fearful that the Committee may rely on the Staff's recent characterization of the CAISO preliminary analysis. If the Staff's "memorandum" is not stricken, Carlsbad would like the opportunity to file a reply brief on these issues raised in the staff memorandum.

Dated: Feb 9, 2012

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ORDER

The Committee, having read and considered the objections of the City of Carlsbad and the Center for Biological Diversity, and good cause appearing therefore, the memorandum filed by the CEC staff on February 2, 2012 is hereby stricken.

Alternatively, other parties to these proceedings are entitled to file reply briefs no later than _____, 2012

It is so ordered.

_____
Presiding Member

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION FOR THE *CARLSBAD ENERGY CENTER PROJECT*

Docket No. 07-AFC-6
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(Revised 11/29/2011)

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*indicates change

DECLARATION OF SERVICE

I, Flora Waite, declare that on, 2/9/2012, I served and filed copies of the attached Motion of City of Carlsbad to Strike Staff Memorandum of 2/2/12 dated 2/9/12.
The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[www.energy.ca.gov/sitingcases/carlsbad/ index.html]**.

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

(*Check all that Apply*)

For service to all other parties:

X Served electronically to all e-mail addresses on the Proof of Service list;

____ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked "hard copy required."

AND

For filing with the Docket Unit at the Energy Commission:

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

____ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

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

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

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

California Energy Commission
Michael J. Levy, Chief Counsel
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Flora

*indicates change