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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-06

REVISIONS TO THE REVISED PRESIDING MEMBER'S PROPOSED DECISION

After reviewing the comments submitted by the parties and the public by the April 27, 2012, deadline for comments, we recommend the following revisions[1] to the March 28, 2012, Revised Presiding Member's Proposed Decision (RPMPD):

INTRODUCTION

1. Introduction, p. 1-3, first 3 bullets, revise as follows:

- Begin construction: ~~_____~~ **First quarter, 2014**
- Startup and testing: ~~_____~~ **Spring, 2016**
- Commercial operations: ~~90 days after testing begins (_____)~~ **Summer, 2016**[2]

2. Introduction, p. 1-8, eighth paragraph, revise as follows:

A Revised PMPD (RPMPD) was issued on March 28, 2012. A Committee Conference to receive comments on the RPMPD was held on April 19, 2012 in Carlsbad. The deadline for filing written comments was April 27, 2012. Following the issuance of ~~an errata~~ **RPMPD** revisions on **May 15**~~_____~~, 2012 the full Energy Commission considered the RPMPD and revisions on **May 31**~~_____~~, 2012 and adopted the RPMPD **and revisions**~~as modified by the errata~~.

3. Introduction, p. 1-9, last paragraph, revise as follows:

[1] Where text is modified, changes are shown in **bold underline**/~~strikeout~~ (**new text**/~~deleted text~~).

[2] Carlsbad Energy Center LLC'S Additional Comments on the Committee's Revised Presiding Member's Proposed Decision (April 27, 2012), pp. 9 - 10.

The record contains public comments from concerned individuals and organizations. Throughout these proceedings, as reflected in the transcribed record, the Committee provided an opportunity for public comment at each Committee-sponsored conference and hearing. Numerous oral and written public comments were received during the Evidentiary Hearing**s** and to a lesser extent during the PMPD **and RPMPD** comment hearing**s** and comment period**s**. The significant comments are addressed throughout the remainder of this Decision, either directly or in the narratives.

Some comments which are not specific to a particular topic area are addressed here.

Intervener Rob Simpson (Simpson) asks that the Energy Commission not make a decision on this project until it has its full five members and believes that it is important that the Commissioner positions requiring backgrounds in environmental protection and economics be filled. He does not cite any legal authority, however, and Public Resourses Code §25209 requires that three Commissioners may take action on Commission business. We also note that, following the release of the RPMPD, Andrew McAllister was appointed to fill one of the vacant positions, increasing the number of Commissioners to four.

PROJECT ALTERNATIVES

4. Alternatives, p. 3-3, add a footnote to the first full paragraph as follows:

The two sites rejected for failing to meet the screening criteria were[3]:

5. Alternatives, p. 3-21, revise and renumber Findings 7 and 8 as follows:

7. ~~Without the CECP, the region and State will not benefit from the clean, renewable source of new generation that the CECP facility will provide.~~**The City of Carlsbad proposed several site alternatives to CECP, and late in the proceeding**

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[3] **In comments on the RPMPD, Intevener Simpson suggests two additional alternatives—adding wind turbines to the CECP stacks and/or placing a central receiving solar thermal generator on the entire Encina site in place of CECP. Turbine blades are infeasible for the visual impacts they would create. Solar panels with a tower like central receiver glowing brightly during the day would likely raise visual impact issues and would frustrate the City's plan to redevelop at least the portion of the Encina site between the rail corridor and the beach. As we are required to study a "reasonable range of alternatives," not an infinite range, and with these proposals coming so late in the process, we will simply acknowledge them without further study.**

Simpson cites a California Attorney General publication (Addressing Climate Change at the Project Level, http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf), suggesting that it compels us to require the installation of solar panels on suitable surfaces on CECP. In fact, this document offers a menu of mitigation measures for projects that are found to have climate change impacts. Here, we find that the CECP has no significant climate change impacts and offers the benefits of integrating and supporting renewable energy generation and reducing climate change impacts from the fosil fueled generating fleet. No mitigation is necessary.

supported a "no project" alternative based on proposed generation projects at Pio Pico, Quail Brush, and Escondido (the "PPA Alternatives"); all of these alternatives were evaluated in testimony from the parties, and particularly by staff.

8. Even if CECP is constructed, the CAISO has indicated that Encina Units 4 and 5 will still be required for electric reliability until further generation or transmission upgrades allow their decommissioning.

9. If CECP is not constructed, the CAISO has indicated that Encina units 4 and 5 will be required by the CAISO to stay on line indefinitely, delaying compliance with the State's Once-Through Cooling Policy directed at reducing impacts to the marine environment.

10. The "PPA Alternatives" are less efficient than CECP, and would have higher criteria pollutant emissions and GHG emissions per MW/hr than CECP.

11. Installation of photovoltaic projects or other local renewable generation is not capable of providing the local reliability needs that CECP, as a project objective, is intended to satisfy.

12. CECP is environmentally preferable to other alternatives, including both the "PPA Alternatives" and the site alternatives proposed by the City in Carlsbad.

~~8~~**13**. If all Conditions of Certification contained in this Decision are implemented, construction and operation of the CECP will not create any significant direct, indirect, or cumulative adverse environmental impacts except the land use impacts identified in the Land Use and Override Findings sections of this Decision.

COMPLIANCE AND CLOSURE

6. Compliance/Conditions, p. 4-2, add the following text before the Findings of Fact:

Response to Party Arguments and Public Comments

Intervener Rob Simpson asks, in an RPMPD comment, that funding be set aside for the retirement of the CECP facility, specifically a condition that the "Developer is to deposit $10,000,000 per year with the Commission until it can demonstrate adequate funds to dismantle the facility upon retirement." The Commission has not previously imposed such a requirement. No evidence suggests that failing to remove this facility after it ceases generating electricity will have any unmitigable signific environmental impacts. The policy question raised by Mr. Simpson's request is worthy of further study, however, and we refer it to the Commission's Integrated Energy Policy Report Committee for future consideration.

RELIABILITY

7. Reliability, p. 5.3-5, revise Finding 8, add new Finding 9, and renumber subsequent Findings as follows:

8. ~~The CECP's water supplies will likely be reliable if the City of Carlsbad and the Applicant can resolve their dispute regarding the appropriate sources of water for project operations as discussed in the Soils and Water Resources section of this Decision.~~ **Reclaimed water necessary for CECP's daily industrial needs is not currently available without a significant expansion of the City's wastewater treatment infrastructure.**

9. **If reclaimed water is unavailable, CECP will rely on an on-site, reverse osmosis treatment system to derive necessary industrial water, generated from a maximum of 4.3 million gallons per day (mgd) of seawater.**

10. The CECP will be designed and constructed in accordance with applicable engineering LORS to withstand seismic events and to prevent incidents of flooding.

~~10~~**11**. The CECP is expected to meet or exceed industry norms for power generation reliability and will not degrade the overall electrical system.

~~11~~**12**. The use of two combustion turbine generators, configured as independent equipment trains, ensures inherent reliability of the CECP's generating capacity.

~~12~~**13**. The CECP is designed to provide base load, intermediate, and peaking power according to demand.

~~13~~**14**. The CECP will enhance California's power supply reliability and contribute to electricity reserves in the region.

GREENHOUSE GAS EMISSIONS

8. Greenhouse Gases, p. 6.1-2, last partial paragraph, revise as follows:

The Energy Commission recognizes that meeting the AB 32 goals is vital to the state's economic and environmental health. ~~CARB staff is developing regulatory language to implement its plan and holds ongoing public workshops on key elements of the recommended GHG reduction measures, including market mechanisms. The scoping plan adopted by CARB relies heavily on cost-effective energy efficiency and demand response, renewable energy, and other priority resources in the loading order (discussed below) to achieve significant reductions of emissions in the electricity sector by 2020. Even more dramatic reductions in electricity sector emissions would likely be required to meet California's 2050 greenhouse gas reduction goal. CARB has approved a CO2 Cap and Trade regulation that would, upon its completion and implementation, add to the market forces driving towards the most efficient fossil-fuel fired generation;~~

~~and the CECP would be subject to this Cap and Trade regulation. In evaluating the GHG emissions generated by a facility under our jurisdiction, we assess whether the facility would be consistent with and support these policies.~~ **CARB has adopted regulations for the "cap and trade" of carbon dioxide emissions and other climate warming emissions. This program is now in effect, and will add to the market forces driving towards the most efficient fossil-fuel fired generation, and the CECP, like all power plants, will be subject to such "cap and trade" provisions. As we discuss below, we find that CECP will not result in a significant cumulative adverse GHG impact because its operation will actually reduce GHG emissions "compared to the existing setting" because of its greater efficiency compared to the plants that it will replace or displace in the loading order. (See Cal. Code Regs., tit. 14, § 15064.4(b)(1).) The current policy of relying on efficient gas capacity for reliability, coupled with renewable generation to meet state Renewable Portfolio Standards requirements, will greatly reduce fossil-fired energy generation, as indicated by Greenhouse Gas Table 4 (taken from Ex. 200, p. 4.1-115). The table forecasts a reduction in non-renewable generation of more than 36,000 gigawatt hours by 2020 (compared to 2008), even as gas-fired generation capacity is added to the system for reliability in order to back up and integrate renewable generation.**

Moreover, we note that CARB's newly adopted "cap and trade" program will require the purchase of allowances or offsets for all GHG emissions, with a cap on total power plant emissions in order to meet AB 32 requirements. Thus, the CECP must completely comply with "regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions" adopted by a public agency through a public review process "to mitigate the projects incremental contribution of greenhouse gas emissions." (Cal. Code Regs., tit. 14, §15064.4(b)(3).) CECP's required compliance with this program is an additional basis for finding that CECP's emissions are not a significant impact on the environment. (Cal. Code Regs., tit. 14, § 15064.4(b).)

9. Greenhouse Gases, p. 6.1-18, insert before Findings of Fact as follows:

7. Response to Party Arguments and Public Comments

Intervenor Center for Biological Diversity argues that CECP may displace electricity generated by the San Onofre Nuclear generating facility, thereby increasing fleet GHG emissions (a nuclear generator does not emit GHGs). This thought has arisen in the context of equipment failures at San Onofre, which have taken its substantial generating capacity off line while technical causes and solutions are investigated.

The testimony in December 2011 regarding San Onofre was to the effect that closure of that facility would create greater reliance on gas-fired generation to satisfy reliability needs, and that the Carlsbad location for such generation is

even more important in such circumstances. (Ex. 230, p. 3.) This fact in no way contradicts the "economic dispatch" of the most efficient gas-fired facilities in place of older, less efficient ones. If anything, closure of San Onofre means that a more efficient facility such as CECP has even greater benefits for GHG reduction, as it will displace older, less efficient facilities that otherwise may be needed for reliability should San Onofre not operate.

Intervener Rob Simpson argues in his RPMPD comments the a "life-cycle" analysis of GHG emissions should be applied to this project. He implies that adding in the GHG emissions resulting from producing the concrete necessary to build the CECP would materially change our conclusions. He cites only to the annual GHG emissions from the output of entire concrete sector in California, not the much smaller portion of that output that would be used to build CECP.

Intervener Simpson commented that the Commission should adopt the life-cycle cost analysis approach used by the South Coast Air Quality Quality Management District for assessing the CECP's potential for significant greenhouse gas emission impacts. The Natural Resources Agency's CEQA Guidelines for GHG analyses, described above, do not present it as a specific method or recommend its' use. We believe that the approach we have chosen is a reasonable response to the Guidelines.

Mr. Simpson also requests that the Commission condition the project so that "[c]onstruction is subject to the CPUC approval of a Power Purchase Agreement which compensates the operator only for generation and not for the capacity to generate. The PPA must stipulate that the Greenhouse gas emissions from the facility must be sufficiently below available generation to offset construction greenhouse gas emissions within 5 years of construction" (Carlsbad PMPD Comments. By Rob Simpson and Helping Hand Tools (2HT), a California Non-profit Corporation, April 27, 2012, p. 17.) He does not explain how or what purposes this proposal would advance. Having found the CECP's GHG emissions to be insignificant, we see no reason to interfere in the market contracting process and are not certain of our authority to do so.

10. Greenhouse Gases, p. 6.1-19, add new Findings 2a, 2b, 7a, 16, 17, and 18, and revised Finding 12 as follows:

2a. When it operates, CECP will reduce GHG emissions compared to the existing setting, as it will operate to replace or displace less efficient gas-fired generation.

2b. CECP will be required to comply with CARB's newly effective "cap and trade" regulations that implement AB 32.

7.a. Even with increased gas-generation capacity like CECP to keep the electric system reliable, renewable energy to meet RPS requirements will supplant gas-fired generation, reducing non-renewable generation by more than 30,000 gigawatt hours by 2020.

12. Intermittent **renewable** generation needs **flexible, fast-ramping** dispatchable generation, such as the CECP, in order to be integrated effectively into the electricity system **in quantities necessary to meet the State's Renewable Portfolio Standard**.

16. Given the current and projected long-term plentitude of inexpensive natural gas supplies, it is speculative to assume that CECP will be fueled with liquid natural gas (LNG).

17. If Southern California gas-fired power plants were to be fueled with LNG in the future, and assuming LNG has a higher carbon content, a more efficient generating facility such as CECP will result in even greater reductions in GHG emissions than would otherwise be emitted from the existing gas-fired plants used to secure electric system reliability.

18. As required by the criteria expressed in the Avenal AFC precedent decision, the CECP will not increase the overall system heat rate; will not interfere with generation from existing renewable generating sources; and will reduce system-wide GHG emissions.

AIR QUALITY

11. Air Quality, pp. 6.2-18 and 6.2-24, Air Quality Tables 9 and 11, respectively, add "Ex. 226" to each table's "Source".

12. Air Quality, p. 6.2-22, revise Footnote 10 as follows:

~~A draft environmental document has not yet been prepared for the I-5 widening project, and due to the delay in the environmental documentation it is likely that the project will not begin construction near the CECP project site until sometime between 2015 and 2020, so the CECP construction and I-5 widening project construction will not occur at the same time in the same general area (i.e. no cumulative air quality impacts). The CECP operation and the I-5 widening construction are expected to have maximum air quality impacts in different locations due to the differences in the types emission sources and their relative buoyancy and downwind dispersion. Therefore, significant cumulative impacts from the CECP operation and I-5 widening construction are not expected.~~

The Interstate 5 North Coast Corridor Project Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/DEIS") was published for the I-5 project after the evidentiary hearings had occurred. Regarding construction impacts, the two-paragraph construction impacts section states that the project

would not adversely impact air quality, and that cumulative impacts would be less than significant. It also indicates that only "Phase 1 activities" (occurring before 2020) could occur within a timeframe coinciding with construction of CECP; Phase 2 and Phase 3 activities (including the replacement of the Agua Hedionda Lagoon Bridge) would not occur until after 2021. However, as reflected in the testimony at hearing, even Phase 1 activities in Carlsbad are reported to be several years in the future, at a date not yet determined. It is thus speculative to assume that construction of these projects will overlap, and the construction impacts would be temporary and (with mitigation) less than significant even if they should.

Regarding cumulative operational impacts, the DEIR/DEIS states that the proposed project would reduce particulate emissions compared to the current baseline, and that toxic emissions from freeway traffic would also likely be reduced by the widening project. (DEIR/DEIS, pp. 3.14-6, 3.14-9.) These would be reductions from the current baseline conditions currently included in the Staff's air quality analysis. Moreover, the CECP operation and the I-5 freeway widening impacts will be in different locations due to the different types of emission sources and the relative buoyancy of CECP turbine emissions, which will be dispersed much further downwind. Therefore, significant cumulative impacts from the CECP operation and the I-5 widening project should not occur.

13. Air Quality, p. 6.2-26, revise the Prevention of Significant Deterioration Permit subsection, as follows:

9. Prevention of Significant Deterioration (PSD) Permit

~~There is some disagreement among the parties about whether the CECP will be subject to a PSD permit for its GHG emissions. The PSD is a federal permit, issued either by the local air district under delegated authority or by US EPA, in either case not subject to the Energy Commission's. Some of the Intervenors argue that the Energy Commission cannot issue its certification until after the PSD permit is issued or a determination that no permit is required is made. (See, eg, the Center for Biological Diversity's brief dated January 10, 2012.)~~

~~Staff's expert witness testified that it was unlikely that US EPA would require anything by way of design or operations features beyond those already required by the SDAPCD and reflected in our conditions of certification below. Rather than hold up approval, adding additional delay before construction can begin following approval of a PSD permit, we believe it best to go forward with our approval at this time. To be clear that construction cannot begin until the PSD permit is either issued or found inapplicable, we add Condition **AQ-SC11** to that effect. Compliance with federal law is assured because the project cannot go forward until the permit is obtained or found unnecessary.~~

Although the issue is yet unsettled, and there is no final determination of applicability, it is possible if not likely that CECP will require a PSD permit for GHG emissions to satisfy new federal requirements for such. (12/12/11 RT. p.

190.) The PSD is a "preconstruction permit," in that a project may not be constructed until the permit is obtained and becomes final. (40 C.F.R. § 52.21(b)(43)[2011].) The San Diego Air Pollution Control District (APCD), the agency that would normally issue any permit absent Energy Commission's preemptive statute, has not adopted requirements for its State Implementation Plan regarding federal PSD provisions. Because it has not done so, federal requirements are implemented through a separate federal permit, issued by the U.S. Environmental Protection Agency (EPA). For CECP, EPA Region 9 would grant the federal permit unless such authority is delegated to the APCD; either way, the permit remains a separate federal permit. (40 C.F.R. § 124.41 [2011]; Greater Detroit Res. Recovery Authority v. U.S.E.P.A. (6th Cir. 1990) 916 F.2d 317, 320-321 ["Permits issued under such a delegation are considered to be EPA-issued permits."]

When EPA or its delegate issues such permits, the permit applicant must satisfy purely federal requirements, and state law requirements are excluded from any consideration in the permit or in the appeal of such permits. (See, e.g., In re West Suburban Recycling and Energy Center, L.P. (6 E.A.D. 692, 698 (EAB 1996); In re Sutter Power Plant (8 E.A.D. 680, 690 (EAB 1999); In re Tondo Energy Co. (9 E.A.D. 710, 717 (EAB 2001).)[4]

Thus, if CECP must obtain a PSD permit, it is a federal permit issued by EPA, cannot address state law issues, and is appealable solely at EAB and subsequently the federal Ninth Circuit Court of Appeals. It follows that the Commission has no purview over this federal permit, nor does it enforce the provisions that it implements.[5]

Power plant applicants at the Commission, when they are required to get a PSD permit, apply to EPA after they have obtained their state permit because it is EPA's preference that state and local permits be issued first. (12/12/2011 RT pp. 190-191.) In fact, EPA will typically wait until state permitting is finished before issuing its PSD. (*Ibid.*) Staff testified that the application of the State's NSR requirements, supplemented by any further mitigation required by the Commission, are so stringent that attainment of a subsequent PSD permit does not normally require any changes to a project or its emissions, or any further mitigation, beyond that required by the State permit. (*Id.*, at pp. 208-209.)

Intervenors contend that the Commission cannot issue a license absent a finding that the project conforms to federal PSD requirements, citing Public Resources

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[4] The cited references are to the published decisions of the EPA Environmental Appeals Board (EAB), which rules on challenges to PSD permits issued by delegate state agencies or by the EPA regional administrators.

[5] The Commission permit is for the federal requirements for New Source Review (NSR) required by the federal Clean Air Act. In California, NSR requirements are part of the State Implementation Plan for all air districts, and are thus issued as state law requirements, unlike the PSD requirements discussed here.

Code Section 25523(d)(1), which requires a finding of project conformity with "applicable local, regional, state, and federal standards." They further contend that such a finding of conformity cannot be made until EPA issues such a permit, or at least until the Commission (or perhaps its staff or the air district) performs the PSD analysis that it believes EPA would itself do.

We disagree. EPA will perform its own analysis if a permit is required. The testimony and briefs have explained that the federal PSD process, including its appeals, can take years to complete, and that EPA would prefer to see all state permits issued prior to completing its process. Moreover, the testimony is that projects licensed by the Commission have not been altered in any significant way by the subsequently issued federal PSD permit, either with regard to emissions levels or mitigation, and this has continued to hold true for the GHG PSD permit EPA recently issued for the Palmdale project. (12/12/11 RT 208-209, 218, Ex. 199N.) Staff testified that CECP would meet federal BACT requirements for PSD. (Ex. 230 [Walters, p.3] 12/8/11 RT 192.)

In light of the testimony referenced above, we believe that CECP will comply with federal PSD requirements, for two reasons. First, all the evidence persuasively indicates that CECP will have no difficulty complying with PSD requirements. Second, because the PSD permit is a pre-construction permit, CECP must comply with such requirements or it cannot be constructed. In other words, CECP will comply with federal law because it must comply with federal law.

Intervener Rob Simpson, in a comment on the RPMPD, points out that the SDAPCD is in the process of obtaining delegated authority from EPA to issue PSD permits. He believes that would make the PSD permit a State permit and asks what effect that would have on our determination.

In our view, whether issued by a local air district under delegated powers or by the EPA, a PSD permit remains a federal permit. The source of the requirement and standards for issuance of the permit remain federal. It has no effect on our determination that the PSD permit is unlikely to change

14. Air Quality, p. 6.2-26, insert before the Findings of Fact, as follows:

10. Response to Party Arguments and Public Comments

Mr. Simpson asks if the increase in annual PM2.5 increase shown in Air Quality Table 9 from 100% to 101% of the limiting standard indicates that the CECP would cause a new violation of an air quality standard. The District is in state nonattainment status for PM2.5 as reflected in Air Quality Table 2. Thus it must go below the standard for three years in order to receive attainment status. Until it does, a violation is considered to exist and an increase from 12 to 12.1 $\mu g/m^3$ (100 to 101%) does not create a new violation.

Believing the annual PM2.5 data in Air Quality Table 9 to show a new violation, Mr. Simpson then asks why the following paragraph "denies the violation." That following paragraph does not refer. It instead summarizes the results of FSA Air Quality Tables 23 – 25 and related text regarding simultaneous startup and shutdown of the two units, fumigation conditions, initial commissioning of the turbine units, and chemical reaction of plant emissions in the atmosphere. (Ex. 222, p. 4.1-37 – 4.1-41.)

Air Quality Table 9 illustrates the response to another comment from Mr. Simpson. He alleges that the use of data from as early as 2002 in determining the amount of offset credit to be derived from the shutdown of Encina Units 1 – 3 is inappropriate, as well as its use for determining impact under CEQA. The air district regulates offsets and determined that use of a 5 year average beginning in 2002, was appropriate for those purposes. Our CEQA analysis is not based on that information but instead takes air quality monitoring data to set background concentrations (the "Background" column in Air Quality Table 9) and adds the calculated project emissions ("Project Impact") to derive a "Total Impact." Therefore the choice of 2002 – 2006 data by the District do not affect our CEQA analysis. In fact, the background PM2.5 levels for 2003 and 2004 were higher (14.2 and 14.1 vs. 12 $\mu g/m^3$) than the 2007 level used in Air Quality Table 9. (Ex. 222, pp. 4.1-13 – 4.1-16, 4.1-19 – 4.1-20.)

Mr. Simpson suggests that the Air District's FDOC has expired, referring to an San Diego State Implementation Plan rule that an Authority to Construct (ATC) expires one year from the date of issuance unless a longer period, up to five years, is granted. In Energy Commission proceedings, the Final Commission Decision, serves as the ATC. Our certifications are valid for five years. (Cal. Code Regs., tit. 20, §1720.3.) No Final Commission Decision had been issued at the time of Mr. Simpson's comment and the ATC was therefore not issued, much less expired. We also note that the Air District stated in an August 12, 2011 letter to Mike Monasmith that the FDOC "remains valid." (Ex. 229.)

In addition to the above comments, Mr. Simpson makes broad, unsupported statements alleging deficiencies in the FDOC and other aspects of the air quality evidence. He also asks a series of questions about the assumptions and methodologies behind that evidence. Discovery is long ended. Mr. Simpson participated in the evidentiary hearings at which such questions could be raised, and many were in fact discussed, if not by Mr. Simpson, then by other parties. The questions are not new and were addressed either in the FDOC, staff or applicant testimony, or the PMPD and RPMPD. He has offered no credible evidence in rebuttal or in support of his various assertions that the analysis was incorrectly conducted. We find no reason to question the efficacy of the Air District or Commission Staff's analysis.

15. Air Quality, p. 6.2-27, add new Finding 11 as follows:

11. CECP will comply with federal PSD permit requirements for GHG.

PUBLIC HEALTH

16. Public Health, p. 6.3-7, insert the following text before the Findings of Fact:

Intervener Rob Simpson asserts that a Maximum Achievable Control Technology (MACT) analysis must be conducted for the project and that the FDOC failed to do so. The SDAPCD is required to conduct a Toxics Best Available Control Technology (T-BACT) analysis and did in fact do so in preparing the FDOC. We also note that the Bay Area Air Quality Management District, in its Best Available Control Technology (BACT) Guideline, describes its T-BACT determinations as having "historically been at least as stringent as federal Maximum Achievable Control Technology." (http://hank.baagmd.gov/pmt/bactworkbook/default.htm, Section 1, BACT/TBACT Polity and Implementation, Introduction.) Absent a showing that a MACT analysis provides anything beyond the T-BACT analysis already covered, we see no reason to require one.

WORKER SAFETY/FIRE PROTECTION

17. Worker Safety, p. 6.4-6, last partial paragraph, revise as follows:

We therefore adopt Condition of Certification **WORKER SAFETY-7** to require the project placement of a barrier (earth or other materials) along the entire eastern property line shared by the CECP and I-5 of sufficient strength and height so as to prevent a runaway car or semi-trailer truck from piercing the barrier and going over the edge and down into the power plant site. This barrier will also serve to prevent line-of-sight viewing of the power plant site from the shoulder of I-5. In designing the barrier, the project owner will consult with Caltrans and then submit a final plan to the Energy Commission Compliance Project Manager for review and approval. The project owner will be free to negotiate cost-sharing of this barrier with Caltrans and will be required to submit the cost-sharing contract with Caltrans to the CPM for review and approval. Staff believes that this barrier will serve the dual purpose of protecting safety and security. The **possible partial** 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**.

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18. Worker Safety, p. 6.4-10, fifth paragraph, revise and add a footnote as follows:

Here, CFD asserts that anything less than a 50-foot width **is** inadequate. 50 feet allows the flexibility they feel they need in parking fire response vehicles and accessing the equipment stored on those vehicles without impeding the passage of other vehicles.[6] (2/4/10 RT: 52 – 55.)

19. Worker Safety, p. 6.4-11, second paragraph, revise as follows:

The City insists that the Commission must adopt the access standards set by its fire officials, citing provisions of the Fire Code (24 Cal. Code Regs. §§ 503.2.1, 503.2.2) setting a 20-foot minimum width and allowing the "fire code official" to "require an increase in the minimum access widths where they are inadequate for fire or rescue operations." (24 Cal. Code Regs. § 503.2.2.) "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.) Given the Energy Commission's exclusive jurisdiction over the permitting and regulation of thermal power plants such as the CECP, the final determination of the appropriate access width is **appropriately** ours to make ~~as we must both set the development standards for the project and then enforce them~~. ~~While the~~ **The advice** ~~opinions~~ of the local fire officials ~~who will provide the fire protection services are~~ **is** an important consideration, **of course, but** ~~they are~~ not dispositive.[7] After considering those opinions, along with those of other experts, we decide that a 28-foot minimum road width is appropriate for this project.[8] This width exceeds the Code standard and is generally consistent with the design of other power plants. ~~The local fire department will continue to provide fire services to the project; ours is a planning and regulatory role.~~ **To the extent that Fire Code § 503.2.2 gives unfettered discretion to local fire officials to modify development standards, we override that Fire Code provision.**

20. Worker Safety, p. 6.4-11, insert the following new paragraphs at the end of the Public Comment section:

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[6] When asked to explain how he came to recommend a 50-foot road width, City Fire Marshall Heiser replied: "I do think that there is both an art and science to determining this when you're dealing with such a complex issue. "So when looking at the existing code of 24 feet, I looked at the significant threat, potential threat, and the positions, locations, access routes, and doubled that width to 48. And then, and I'm sorry because this probably doesn't reflect as positively, I tend to round up, and rounded up to 50." (5/19/11 RT: 177.)

[7] We must also give some weight to the City's quite evident intent and efforts toward preventing the approval and development of this project, a possible explanation for the advice that is quite conservative when compared to that of the other experts.

[8] To the extent that the road widths on Worker Safety Figure 1 are less than 28 feet, they shall be adjusted to conform to that standard. The figure does not modify the requirement.

Several members of the public expressed concerns that a fire at CECP might endanger the public, or the firefighters themselves. However, the record indicates that either risk is exceedingly low. The project will have fire excess road widths exceeding those required by the California Fire Code (20 feet), and exceeding the width more recently adopted by the City of Carlsbad (24 feet). CECP will have an elaborate fire prevention design, including very limited fuel packets that can result in combustible fire, and there will be elaborate and extensive use of automatic fire suppression devices. (2/4/10 RT. pp. 14-19.) The only major combustible source at the site is the natural gas that fuels the plant. Natural gas is not stored onsite, and conflagrations of this type are controlled by shut-off valves and allowed to burn out with whatever isolated fuel is there. (*Ibid*.) The only other combustible sources are oil in transformers and compressors, which are subject to automatic fire suppression.

The testimony indicates that the very purpose of power plant design is to avoid the need for fire department response even when there is a fire. (*Id*., at pp. 12-18.) Likewise, the need for "hazmat" response is described by expert testimony as very low. (E.g., Ex. 200, pp. 4.4-9-12.) Location near to a freeway is not an unusual situation for power plants, nor does it present appreciably more public risk. (2/4/10 RT 135:1 - 25.)

In its final RPMPD comments, the City suggests that it may not provide fire services to the CECP due to its concerns about the road width standard we adopt. As described above and previously in this section, the proposed power plant is designed with fire suppression and other safety systems to prevent the start of fires and to quickly suppress those fires that do start. The role of the local fire authorities is described as secondary rather than as first responders.

The City comment Figure Worker Safety-1 "does not follow the requirements of turnarounds found [in California Fire Code section] 503.2.5." Section 503.2.5 provides: "Dead-end fire apparatus access roads in excess of 150 feet.in length shall be provided with an approved area for turning around fire apparatus."

There are actually no "dead-ends" within the power plant site in that a fire truck entering the "bowl" would not have to backup or turn around to exit the bowl. There are two ramps into and out of the bowl and thus the truck can drive down one and up the other. Also, all fire lanes have no "dead-ends." That is, a vehicle can drive from one end of any fire lane to the other and exit the site via one of the two ramps.

21. Worker Safety, p. 6.4-12, revise Finding 11 and the Conclusion of Law as follows:

11. With implementation of the Conditions of Certification, below, the CECP will comply with all applicable LORS **with the exception that Fire Code § 503.2.2, to the**

extent it gives local fire officials the ability to set access road widths without review or modification by the Energy Commission will not be complied with. This is the result of our decision to require a minimum 28-foot road width instead of the 50-feet requested by the City Fire Marshall. We override that potential inconsistency with the Fire Code for the reasons set forth in the Override Findings section of this Decision.

CONCLUSION OF LAW

We therefore conclude that the CECP will not create significant health and safety impacts to workers, and will comply with all applicable laws, ordinances, regulations, and standards listed in the appropriate portion of Appendix A of this Decision **except the potential incompatibility with Fire Code § 503.2.2, described above** .

BIOLOGICAL RESOURCES

22. Biological Resources, p. 7.1-8, add a footnote to the second full paragraph, as follows:

The timing of the closure of ESP EPS units 4 and 5 is uncertain, as the Water Board's OTC Policy leaves open the possibility that they will continue to run after 2017 if they continue to be essential to electric system reliability, and also allows compliance with the Policy by mechanical or operational methods of reducing impacts. So long as units 4 and 5 continue to operate, CECP's use of ocean water will be from the EPS system (taking and returning water to the ocean), and will not result in any cumulative OTC or new impact related to OTC. Moreover, even if one assumes the eventual shutdown of units 4 and 5, the relatively small use of seawater taken from the OTC system would not be a significant cumulative impact to marine biology, as discussed further in this Decision under the topic of Soil and Water Resources.[9]

23. Biological Resources, p. 7.1-9, second paragraph, revise as follows:

This matter is fully discussed in the **Soil and Water Resources** section. For present purposes, we note that the evidence establishes that the CECP is air cooled and will not use OTC **beyond that used by Units 4 and 5. Once Units 4 and 5 shut down, an event whose timing is uncertain, the amount of sea water used by CECP on its own will not cause significant impacts on biological resources**~~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 RT 266:17-23; Exs. 145; 200, pp. 4.2-16 to 17, 4.2-29; Staff Opening Brief, pp. 7-8; Staff Reply Brief,

[9] Intervener Simpson asks, in his RPMPD comments, a converse question - if the Encina OTC cooling water use ceases, will marine organisms, having become acclimated to the heated water discharged facility, be harmed by its elimination? While we are unaware of any specific evidence on the point, we infer from the scientific studies that informed the state policies and mandates to eliminate once through cooling, that a net benefit to aquatic species would result from shutting down Encina's OTC system. Further study of this highly speculative notion is unwarranted.

pp. 3-7.)~~We are thus persuaded that the CECP will not create significant impacts on biological resources.~~

4. Response to Party Arguments and Public Comments

Intervener Simpson raised questions regarding potential impacts on the federally listed endangered fairy shrimp, deposition effects of criteria and non-criteria emissions on various biological resources in the vicinity, and potential impacts of fast-start turbines and related thermal plumes on avian species. No witness testimony or other evidence has been presented to indicate that construction or operation of the CECP could result in these impacts. Mr. Simpson simply raises the questions without offering any justification for us to conclude that they were not already considered in the Commission staff's analysis and other evidence presented.

24. Biological Resources, p. 7.2-3, revise the second paragraph, as follows:

Two sources of industrial water supply are proposed: tertiary treated recycled water from the City of Carlsbad**'s** (City) **wastewater treatment facilities** and desalinated ocean water produced on-site.

LAND USE

25. Land Use, p. 8.1-6, last partial paragraph, through p. 8.1-8, first full paragraph, revise as follows:

Coastal-Dependent Development

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. Locating the CECP and its associated facilities/features on-site at the EPS allows the CECP to utilize the plant's infrastructure (natural gas supply lines and electricity transmission lines), thereby avoiding off-site construction of new linear facilities. Constructing the CECP on this site would avoid the need to develop in areas of Carlsbad unaccustomed or unsuited to this type of industrial development. In addition, by shutting down existing EPS Units 1, 2, and 3, the proposed CECP would enhance the marine environment by reducing the use of seawater for once-through cooling.

~~Coastal-Dependent Development~~
Public Resources Code section 30255 provides: "Coastal-dependent developments

shall have priority over other developments on or near the shore line. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support."

The CECP is located at the existing EPS, which is a "coastal dependent use" pursuant to the Coastal Act, inasmuch as it uses once-through cooling technology. Coastal dependent uses are encouraged to expand "within existing sites and shall be permitted reasonable long-term growth where consistent with this division." (Pub. Resources Code, § 30260.) 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.)

Coastal-Dependent Industrial Facilities

Public Resources Code section 30260 provides, in part: "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. . ."

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. 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. **The CECP's opponents appear to believe that the Coastal Act requires that an industrial development be "coastal-dependent" in order to be approved in the coastal zone.[10] They cite no authority for that proposition beyond the Act. Recently, in fact, the Coastal Commission itself approved a peaker plant in the coastal zone. In 2007, the City of Oxnard denied a application from Southern California Edison (SCE) for a coastal development permit for a 45-megawatt natural gas fired power plant to be constructed next to the existing Mandalay Generating Station.**

[10] The City of Carlsbad's position is more nuanced. It believes that Section 30260 operates to allow a proposal that conflicts with the various protective policies and goals contained in the Act to nonetheless be approved if it is coastal dependent. Here the City believes that the CECP fails the tests for consistency with the Act and coastal dependence and therefore cannot be approved under the Act. We disagree, finding both consistency and coastal dependence but adopt a precautionary override of those alleged Coastal Act deficiencies.

Although power generating facilities were conditionally allowed in the applicable city zone, the project was found to conflict with a zoning code provision stating "coastal dependent energy facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth, where consistent with this article," words identical to the portion of section 30260, set forth above. Because the proposed peaker project was not "coastal-dependent," the City reasoned, it could not be approved.

SCE appealed the City's denial to the Coastal Commission. The Commission found that the City "subsection is the only one [in the City's regulations] that specifically refers to 'coastal-dependent' facilities, and it only 'encourages' such facilities to locate within this zoning designation and does not prohibit non-coastal dependent facilities." It overruled the City and granted the permit. Appeal of Southern California Edison Company, Coastal Commission case A-4-OXN-07-096.[11] That decision was upheld by the Court of Appeal in an unpublished decision.

We accept the Coastal Commission's interpretation of its governing statute and note that the same logic applies to section 30255 which gives "priority" to coastal dependent development but does not prohibit development that is not coastal dependent.

The comments of the project opponents, both intervenors and public members, stress the coastal resource protection and enhancement policies of the Coastal Act, giving little or no attention to competing interests. We note however, that, like many planning régimes, the Act read as a whole calls for a balance between resource protection and economic interests:

> **Section 30001.2 Legislative findings and declarations; economic development**
>
> **The 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 or 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.**

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[11] The quoted text is found in the Recommended Revised Findings on Appeal De Novo Review, dated July 22, 2009 for the August 13, 2009 Coastal Commission meeting. http://documents.coastal.ca.gov/reports/2009/8/Th10a-8-2009.pdf, (beginning at p. 5 of 100.)

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.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(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.

A final avenue of Coastal Act compliance is found in Section 30264 of the Act:

Notwithstanding any other provision of this division, except subdivisions (b) and (c) of Section 30413 , new or expanded thermal electric generating plants may be constructed in the coastal zone if the proposed coastal site has been determined by the State Energy Resources Conservation and Development Commission to have greater relative merit pursuant to the provisions of Section 25516.1 than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable pursuant to the provisions of Section 25516.

Sections 25516.1 and 25516 of the Warren-Alquist Act referred to above relate to Notices of Intention rather than an Application for Certification such as that before us in this proceeding. Nonetheless, we have, by virture of the analysis conducted in order to consider overriding the LORS inconsistencies and CEQA impacts presented in this case addressed the questions presented in Section 30264. In deciding to override, we have found the proposed project site to be superior ("have greater relative merit") than the identified alternatives.

Although we believe that the CECP is consistent with the Coastal Act requirements, given the vociferous opposition from the City of Carlsbad and other project opponents, we will assume, for the sake of argument that the proposed project is not consistent with the Act and adopt overrides for any inconsistencies that might be found.

26. Land Use, p. 8.1-10, following the first partial paragraph, add:

In its RPMPD comments the City requests that the project provide a temporary paved trail until construction begins. The Applicant objects to the request on several grounds: it comes late in the process, is premature in that planning of the connecting segments is not complete and the ultimate location may not be on the Encina property at all, would subject it additional expense, and may conflict with the security and safety needs of the existing Encina facility. Carlsbad Energy Center LLC'S Additional Comments on the Committee's Revised Presiding Member's Proposed Decision (April 27, 2012, pp. 8 – 9). We decline to adopt the City's proposal for those reasons and leave it to the parties to begin negotiations regarding the location of a permanent trail, the ultimate goal.

Intervener Rob Simpson asks that we clarify whether or not our certification of this project serves as the Coastal Act development permit that would otherwise issue from either the Coastal Commission or a delegated local agency. This is that permit.

27. Land Use, p. 8.1-17, add a footnote to the heading, as follows:

a. Is CECP a Public Utility?[12]

28. Land Use, p. 8.1-30, following the last paragraph, add the following text::

9. Response to Party Arguments and Public Comments

Intervener Rob Simpson asks, in an RPMPD comment, "what steps that Commission has taken to comport with the Federal Coastal Zone Management Act (CZMA), including the public notice and participation opportunity requirements"? He does not identify specific portions of the CZMA that are relevant or applicable to this project and, after reviewing the CZMA, we do not find that it has any relevance. Regarding notice were the CZMA in some way applicable, we note that 16 U.S.C. § 1457, Section 311 of the CZMA, requires 30 days notice of hearings; notice of the full Energy Commission's consideration of adoption of the RPMPD was given on March 28, 2011, more than 60 days prior to the hearing.

29. Land Use, p. 8.1-32, revise Finding 11 and add new Findings 14 - 16 as follows:

11. It is unnecessary and futile to consult **further** 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

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[12] Intervener Rob Simpson commented that the RPMPD did not indicate the scope of our interpretation of the term "public utility." The following discussion is limited to the interpretation of the term as it is used in the City's land use regulations.

create the inconsistencies and prevent the development of this project, thereby indicating its unwillingness to allow the project. **Over the four year course of this proceeding, the Commission, through the AFC Committee at various hearings and Commission staff in hearings, workshops, and other communications have effectively consulted on the City's concerns and willingness to allow development of the CECP.**

14. CECP complies with the provisions in Chapter 3 of the Coastal Act.

15. CECP may not be able to purchase sufficient reclaimed water from the City of Carlsbad, making the project "coastal dependent."

16. The demolition and redevelopment of the existing Encina power facilities contemplated by Conditions LAND-2 and LAND-3 will be under the City of Carlsbad's jurisdiction. The potential environmental impacts of those activities can be mitigated with measures similar to those we have imposed upon the CECP. The City has the power to and can and should apply such measures as necessary to reduce those potential impacts to insignificant levels.

30. Land Use, p. 8.1-34 – 8.1-35, revise Condition LAND-3, as follows:

LAND-3 On or before January 1, 2017, project owner shall submit applications for required permits and approvals for demolition, removal, and remediation of the Encina Power Station Units 1 through 5, associated structures, the black start unit and the exhaust stack.

Upon the commencement of commissioning activities of the project, project owner shall request permission from the California Public Utilities Commission (CPUC) and California Independent System Operator to permanently shutdown Units 1 through 5 and the black start unit. The request shall be resubmitted annually thereafter until permission is granted.

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~~ **without** a viable ~~and funded~~ **City approved** 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~~.

Redevelopment of the site to the west of the rail corridor shall be for a purpose other than the generation of electricity.

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**.**

SOCIOECONOMICS

31. Socioeconomics, p. 8.3-6, add new Condition SOCIO-1 after the Conclusions of Law as follows:

CONDITION OF CERTIFICATION

SOCIO-1 The project owner shall pay or reimburse the City of Carlsbad for costs incurred in accordance with actual services performed by the City that the City would normally receive for a power plant or similar industrial development.

Verification: The project owner shall provide proof of payment prior to the start of commercial operation.

OVERRIDE FINDINGS

32. Override Findings p. 9-2, fourth full paragraph and following, revise and insert text as follows:

In the **Land Use** section of this Decision, we discuss in greater detail our findings that CECP will not comply with **state and** local LORS in the following ways:

- The CECP is not consistent with the Carlsbad General Plan. It is not an allowed use under the Public Utilities land use designation that applies to the project site.
- The CECP is not consistent with the Encina Specific Plan to the extent that the Specific Plan restates the allowed uses from the General Plan and Zoning Ordinance and its few specific development standards.
- The CECP is not consistent with the Agua Hedionda Land Use Plan's 35 foot height limitation.
- With the imposition of Conditions **LAND-2** and **LAND-3** requiring the planning and permitting (by the CECP project owner) and financing (by the redeveloper) of the eventual removal and redevelopment of the existing EPS power plant, the CECP serves a substantial, though not an extraordinary public purpose, as required under, the South Carlsbad Coastal Redevelopment Area Plan.

- The CECP is not consistent with the PU zoning applied to the CECP site, which prohibits power plants of 50 MW or greater. The CECP would generate approximately 540 MW. This Commission approval serves as the equivalent of a Precise Development Plan approval.
- **Although we find the CECP consistent with the Coastal Act, Intervenors allege that it is not consistent because it adds to visual blight and may adversely affect aquatic species.**

In the Worker Safety and Fire Protection section of this Decision, we discuss in greater detail our findings that CECP will not comply with State Fire Code section 503.2.2 which gives discretion to local fire officials to modify development standards, and is was used by the City Fire Marshall to modify road width requirements from the normally required 20 feet to 50 feet (we decided to require 28 feet).

33. Override Findings, p. 9-9, revise Findings 1 and 3 as follows:

1. The proposed project will not comply with the City of Carlsbad's land use regulations and standards**, the California Coastal Act, and the State Fire Code,** as follows:
   a. The CECP is not consistent with the Carlsbad General Plan. It is not an allowed use under the Public Utilities land use designation.
   b. The CECP is not consistent with the Encina Specific Plan to the extent that the Specific Plan restates the allowed uses from the General Plan and Zoning Ordinance and its few specific development standards. The Specific Plan's requirement that the plan be amended to account for new development, alike in function to a conditional use permit, is satisfied by this Commission's decision on the AFC.
   c. The CECP is not consistent with the Agua Hedionda Land Use Plan's 35 foot height limitation.
   d. With the imposition of Conditions **LAND-2** and **LAND-3** requiring the planning and permitting (by the CECP project owner) and financing (by the redeveloper) of the eventual removal and redevelopment of the existing EPS power plant, the CECP serves a substantial, though not an extraordinary public purpose, as required under, the South Carlsbad Coastal Redevelopment Area Plan. The Redevelopment Plan's intent is described as replacing the existing EPS power plant, located to the west of the rail corridor with a plant to the east of the corridor, further from the shoreline. The CECP furthers that intention and a Plan Goal to "[f]acilitate the redevelopment of the Encina Power Generating Facility to a physically smaller, more efficient power generating plant."
   e. The CECP is not consistent with the PU zoning applied to the CECP site, which prohibits power plants of 50 MW or greater. The CECP would generate approximately 540 MW.

f. **The CECP may not be consistent with the Coastal Act, by virtue of adding additional visual blight to the project area and adversely affecting aquatic species by its continued use of ocean waters for cooling. We found it consistent but adopt overrides as a precaution.**

g. **CECP will not comply with State Fire Code section 503.2.2 which allows local fire officials to modify minimum road width standards; in this case the City Fire Marshall recommends 50 feet rather than the 28 foot minimum we require.**

3. The project inconsistencies **with City of Carlsbad LORS** described above, with the exception of the failure to provide "extraordinary purpose" under the Redevelopment Area Plan, result from recent amendments to the City's plans and ordinances, enacted at least in part to prevent approval of the CECP. Until those amendments were enacted, the CECP was consistent with the City's plans and ordinances.

LORS Appendix A

34. LORS Appendix A, p. Appendix A – 40, Worker Safety and Fire Protection Table, bottom row, right column, revise as follows:

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.~~

Dated: May 15, 2012, at Sacramento, California.

Original Signed By:

KAREN DOUGLAS
Commissioner
Carlsbad AFC Committee

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-06
PROOF OF SERVICE
(Revised 3/27/2012)

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DECLARATION OF SERVICE

I, Maggie Read, declare that on May 16, 2011, I served and filed a copy of the attached REVISIONS TO THE REVISED PRESIDING MEMBER'S PROPOSED DECISION, dated May 15, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/sitingcases/carlsbad/ index.html].

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

(*Check all that Apply*)

For service to all other parties:

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

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

AND

For filing with the Docket Unit at the Energy Commission:

_X_ by sending one 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
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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:

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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.

Original Signed By:

Maggie Read
Hearing Adviser's Office