DOCKET
07-AFC-6
DATE MAY 30 2012
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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

Intervenors City of Carlsbad and City of Carlsbad
as Successor Agency to the former Carlsbad Redevelopment Agency
Motion for Official Notice

May 30, 2012

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Introduction

The Assigned Committee in the above-referenced proceeding issued the Revised Presiding Member's Proposed Decision on March 28, 2012. Following comments, the Committee issued, on May 15, 2012, issued a document entitled "Revisions to the Revised Presiding Member's Proposed Decision. In this document, at page 14, is the following: "The role of the local fire authority is described as secondary rather than as first responder." The City of Carlsbad ("Carlsbad") then commenced their process to clarify, by ordinance, the role and responsibilities of the Carlsbad Fire Department

Ordinance No. CS-184

On May 22, 2012 the City Council held a public hearing and introduced Ordinance CS-184. It was thereafter adopted on May 29, 2012. Ordinance No.CS-184 is an amendment to the local fire code that clarifies the role of the Carlsbad Fire Department as a responder to incidents at the CECP site. The first reading of this proposal was heard on May 22, 2012. Ordinance CS-184 reads, in part, that the Carlsbad Fire Department is "in a secondary response position and shall provide emergency responses as appropriate on an incident-by-incident basis." The ordinance also contemplates that Response Maps are to be changed to indicate primary response lies with the California Energy Commission, the landowner or the applicant. A copy of Ordinance CS-184 is attached hereto. This ordinance is final and will become effective on June 28, 2012

Authority

This motion for official notice is made pursuant to 20 CCR 1213 which provides that the Commission may take official notice of "any fact which may be judicially noticed by the courts of this state." California Evidence Code 452 on official notice "regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States."

Request

Ordinance CS-184 helps explain and clarify the role of the Carlsbad Fire Department in responding to emergency incidents at the CECP site and is, therefore, germane to this proceeding. Good cause for this motion exists since the ordinance was not adopted until May 29, 2012 and could not be made a part of the City's previous comments in response to the RPMPD. It is the City's position that the Commission must acknowledge this local law and consider it in its decision. As with other local laws, this local law triggers the "meet and confer" process if it is overridden. The recommended decision did not and could not consider this local law. For this reason, Carlsbad requests that the Commission take official notice of Ordinance CS-184.

Ronald R. Ball
City Attorney
City of Carlsbad

Exhibit 7

ORDINANCE NO. CS-184

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AMENDING THE CARLSBAD MUNICIPAL CODE, TITLE 17, CHAPTER 17.04 FIRE PREVENTION CODE TO MODIFY THE 2010 ADDITION OF THE CALIFORNIA FIRE CODE DUE TO LOCAL CLIMATIC, GEOLOGICAL OR TOPOGRAPHICAL CONDITIONS OR INFRASTRUCTURE LIMITATIONS

WHEREAS, Health & Safety Code § 17958 mandates that the City Council of the City of Carlsbad adopt ordinances and regulations imposing the same requirements as are contained in the regulations adopted by the state pursuant to Health & Safety Code § 17922; and

WHEREAS, the City Council adopted the 2010 addition of the California Fire Code at its meeting of March 22, 2011; and

WHEREAS, California Health & Safety Code § 17958.5 and § 17958.7 provide that a city may make changes or modifications in the requirements contained in the provisions published in the California Building Standards Code and other regulations provided they are reasonably necessary because of local climatic, geological or topographical conditions and those changes have been filed with the California Building Standards Commission; and

WHEREAS, the Council did modify that code for certain climatic, geological or topographical features that would have a deleterious effect on emergency services such as fire protection and emergency medical services; and

WHEREAS, there is proposed within the City of Carlsbad a 540 mega-watt power plant to be located in a "bowl" east of the existing Encina power station and west of Interstate 5, east of the NCTD right of way, south of Agua Hedionda Lagoon and north of Cannon Road in a compacted and constricted area; and

WHEREAS, proper emergency response to this facility requires adequate circulation and access; and

WHEREAS, the Carlsbad Fire Chief has determined pursuant to Title 24 California Code of Regulations 503.2.2 that such adequate access and circulation requires a minimum width of 50-feet for access to the bottom of the bowl where the proposed power plant is to be located and a complete circular rim road around the top of this bowl to allow adequate access in staging of emergency vehicles; and

WHEREAS, the Revised Presiding Member's Proposed Decision, dated March 28, 2012 recommends not to follow these standards; and

WHEREAS, that report recommends a incomplete rim road and an inadequate access width of 28-feet; and

WHEREAS, the report states:

> "Given the Energy Commissions exclusive jurisdiction over the permitting and regulation of thermal power plants (such as the proposed power plant), the final determination of the appropriate access width is ours to make as we must both set the development standards for the project and then enforce them. While the opinions of the local fire officials who will provide the fire protection services are an important consideration, they are not dispositive. After considering those opinions, along with those of other experts, we decide that a 28-foot minimum road width is appropriate for this project. The local fire department will continue to provide fire service to the project; ours is planning and regulatory role." (at section 6.4-11)

WHEREAS, this will be the only power plant located in a bowl, approximately 30-feet beneath ground elevation and this condition represents a topographical condition like no other elsewhere in the City of Carlsbad; and

WHEREAS, the proposed plant is located in a highly constrained, constricted and impacted area unlike any other area in the City of Carlsbad and such location represents a unique topographical condition that must be considered when amending the Fire Code; and

WHEREAS, the prevailing winds are likely to cause a major disruption to traffic along Interstate 5 in the event of an explosion or other major event; and

WHEREAS, it is the City Council's duty to ensure that its citizens, its fire department, its visitors, tourists and residents are afforded the highest level of care while at the same time recognizing the need for adequate fire protection, and the City Council, having engaged in this balancing test has determined that local conditions require the Carlsbad Fire Department to respond to such emergencies in a secondary role and to assess the situation on an incident-by-incident basis.

The City Council of the City of Carlsbad ordains as follows:

SECTION I: That Chapter 17.04.340 of the Carlsbad Municipal Code shall be amended to read as follows:

17.04.340 - Section 505.5 Response map updates—Amended.

Chapter 5, Section 505.5 of the 2010 California Fire Code is amended to add the following:

> Any new development, which necessitates updating of emergency response maps by virtue of new structures, hydrants, roadways or similar features, shall be required to provide map updates in a format approved by the fire department. The responsible party shall be charged a reasonable fee for updating the City emergency response maps.
>
> For any new power plant to be developed in the City of Carlsbad located west of Interstate 5, north of Cannon Road, south of Agua Hedionda Lagoon and east of the NCTD right of way, that does not conform to the requirements of the Carlsbad Fire Chief pursuant to Title 24 California Code of Regulations, § 503.2.2, response to any emergency shall be provided primarily by the California Energy Commission or the power plant applicant or landowner, as appropriate, and the Carlsbad Fire Department shall be in a secondary response position and shall provide emergency responses as appropriate on an incident-by-incident basis.
>
> The response maps for any emergency response to this location shall be modified to indicate that the California Energy Commission or the power

plant applicant or landowner, as appropriate, shall provide primary response in the event of an emergency.

The City Clerk shall give notice of this modification as required by Health & Safety Code § 17958.7 to the California Building Standards Commission.

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EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption; and the city clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a Regular Meeting of the Carlsbad City Council on the 22nd day of May, 2012, and thereafter.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 29th day of May, 2012 by the following vote to wit:

AYES: Council Members Hall, Kulchin, Blackburn, Douglas and Packard.

NOES: None.

ABSENT: None.

ABSTAIN: None.

APPROVED AS TO FORM AND LEGALITY

RONALD R. BALL, City Attorney

MATT HALL, Mayor

ATTEST:

LORRAINE M. WOOD, City Clerk

(SEAL)

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)

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*indicates change

DECLARATION OF SERVICE

I, Flora Waite, declare that on April 27, 2012, I served and filed a copy of the attached Intervenors City of Carlsbad and City of Carlsbad as Successor Agency to the former Carlsbad Redevelopment Agency Motion for Official Notice. 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;

_X_ 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
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.

Flora Waite

*indicates change