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**07-AFC-6**

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STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

In the Matter of:

The Application for Certification for the  
CARLSBAD ENERGY CENTER  
PROJECT

Docket No. 07-AFC-6

**CARLSBAD ENERGY CENTER LLC'S OPPOSITION TO  
CITY OF CARLSBAD, TERRAMAR, AND POWER OF VISION'S  
PETITIONS FOR RECONSIDERATION**

July 11, 2012

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**I. INTRODUCTION**

On May 31, 2012, the California Energy Commission ("Commission") adopted the Final Decision for the Carlsbad Energy Center Project, 07-AFC-06 ("CECP"). The Final Decision was docketed, and therefore deemed effective, on June 1, 2012. On June 26, 27, and 28, 2012, respectively, intervenors City of Carlsbad (the "City"), Terramar and Power of Vision filed Petitions for Reconsideration of the Final Decision with the Commission. Carlsbad Energy Center LLC ("Project Owner") submits the instant Opposition to each of the Petitions for Reconsideration ("Petitions"). As further described herein, the Commission should deny the Petitions because they fail to set forth (1) new evidence that could not have been produced during the proceedings, or (2) errors in fact or change or errors of law, and therefore do not meet the requirements of Title 20, California Code of Regulations, section 1720 ("Section 1720")<sup>1</sup>.

**II. ARGUMENT**

The Petitions fail to comply with Section 1720, which provides, in pertinent part:

A petition for reconsideration must specifically set forth either:  
1) new evidence that despite the diligence of the moving party  
could not have been produced during the evidentiary hearings on

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<sup>1</sup> All references to the California Code of Regulations are related to Title 20 thereof, unless otherwise cited.

the case; or 2) an error in fact or change or error of law. The petition must fully explain why the matters set forth could not have been considered during the evidentiary hearings, and their effects upon a substantive element of the decision.

Here, none of the Petitions set forth any new evidence nor any error in fact or change or error of law. Rather, as explained below, the Petitions resurrect issues that were fully vetted throughout the nearly five years long CECP proceeding, in various legal briefs, and during numerous workshops, evidentiary hearings, the several hearings on the Presiding Member's Proposed Decision, and at the Commission's May 31, 2012 Business Meeting wherein the Commission approved CECP and issued a Final Decision (the "Adoption Hearing").

**A. The Commission Previously Considered The City's Request for Payment of Development Impact Fees**

As it did throughout the proceeding, through its Petition, the City requests that the Commission add additional language to Condition of Certification SOCIO-1. SOCIO-1 provides:

**SOCIO-1** The project owner shall pay or reimburse the City of Carlsbad for the 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.

The City's Petition requests that SOCIO-1 be revised to require the Project Owner to reimburse the City prior to the commencement of construction rather than prior to the start of commercial operations, and that the amount of such reimbursements be equal to the amounts calculated by the City. As noted in its Petition, the City has previously made this request. (See City's Petition for Rehearing at 2 and City's Final Comments on the Revised Presiding Member's Proposed Decision at p. 24 [Docket No. 64961].) The City also raised this issue at the Adoption Hearing. (See Transcript of May 31, 2012 Business Meeting at pp. 232: 8-20 and 254-255.) The City's Petition, however, fails to set forth new evidence or an error in fact or law that would justify adding the requested language to Condition of Certification SOCIO-1 through a petition for

reconsideration. Rather, the City's Petition simply reasserts the same arguments previously and repeatedly proffered by the City and previously rejected by the Commission. Accordingly, the City's Petition fails to meet the requirements of Section 1720, and the Commission should therefore deny the City's Petition.

Further, the existing text of SOCIO-1 mirrors the language set forth in California Code of Regulations Section 1715, which is the regulatory authority for the reimbursements at issue. Section 1715 clearly describes the types of costs that are eligible for reimbursement and the procedural requirements to be followed by interested parties seeking reimbursement. SOCIO-1 does not conflict with the requirements set forth in Section 1715. Therefore, as SOCIO-1 sufficiently addresses the reimbursements contemplated by Section 1715, the Commission should deny the City's Petition.

**B. The Commission Previously Considered The City's Request for a Temporary Coastal Rail Trail**

In its Petition, the City reiterates its request that Condition of Certification LAND-1 be revised to require the Project Owner to dedicate an easement so that a temporary Coastal Rail Trail can be constructed east of the railroad tracks. The City previously made this same request in its comments on the Revised Presiding Member's Proposed Decision. (*See* City's Initial Comments on the Revised Presiding Member's Proposed Decision at 12-13 [Docket No. 64809].) Further, the parties discussed this issue in detail at the April 19, 2012 Committee Conference. (*See* Transcript of April 19, 2012 Committee Conference at pp. 58-77.) Then, after considering the presentation of evidence on this issue, the Commission properly rejected the City's request. The City's petition fails to raise new evidence or errors in fact or law to support its renewed request, and, therefore, the Commission should deny the City's Petition.

**C. The Commission Previously Considered Issues Relating to the Removal of the Encina Power Station**

In its Petition, the City requests changes to Condition of Certification LAND-2. The proposed changes relate to the removal of the existing Encina Power Station. The removal of the Encina Plant was the subject of extensive testimony throughout the proceedings. The City and

the Project Owner specifically negotiated the language of Condition of Certification LAND-2. LAND-2 was thoroughly discussed at the December 12, 2011 evidentiary hearings (*see* Transcript of December 12, 2011 Evidentiary Hearings at pp. 225-228), the April 19, 2012 Committee Conference (*see* Transcript of April 19, 2012 Committee Conference at pp. 26-43) and the Adoption Hearing (*see, e.g.*, Transcript of May 31, 2012 Business Meeting at pp. 198:3-11 and 202:5-14). The City has had ample opportunities to propose modifications to LAND-2 and did so on multiple occasions. The City, however, has failed to carry its burden to set forth either new evidence or a mistake of fact or law that would support its proposed revision to LAND-2. Accordingly, the Commission should deny the City's Petition.

**D. The Commission Previously Considered the Project's Compliance with the Coastal Act and Other LORS**

The City's Petition includes an ambiguous statement that the City seeks reconsideration of eight legal issues involving the California Coastal Act, the California Fire Code and other laws, ordinances, regulations and standards. The City's Petition provides no further explanation of its request, and, as this request is entirely unsupported, the Commission should deny the City's Petition.

**E. The Commission Previously Considered the Project's Compliance with Fire Safety LORS**

The Petitions filed by Terramar and Power of Vision contend that the Final Decision does not comply with City of Carlsbad Local Ordinance CS-184. Ordinance CS-184 provides, in pertinent part:

...response to any emergency [at the CECP] shall be provided primarily by the [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 City adopted Ordinance CS-184 just days before the Adoption Hearing, and, at the Adoption Hearing, the Commission took official notice of the ordinance and related staff report. (*See* Transcript of March 31, 2012 Business Meeting at pp. 270:14-18.) At the Adoption Hearing, the

parties also discussed the project's compliance with the ordinance. (*See, e.g.*, Transcript of May 31, 2012 Business Meeting at p. 203:9-24 and pp. 225:10-226:18.) As part of that discussion, the Project Owner reiterated that trained personnel will be located at the project site to address fire and other casualty loss as first responders. (*See, e.g., id.* at pp. 210:25-211:1.) Therefore, contrary to the arguments set forth in the Terramar Petition, as currently contemplated, the Project complies with CS-184 on its face because the Project Owner will serve as the primary responder and the Carlsbad Fire Department can serve "in a secondary response position" as contemplated by the ordinance. After considering all of the evidence and arguments on the issue, the Commission in its Adoption Order made the following specific finding with respect to the Project's compliance with CS-184:

13. Having considered the newly adopted Carlsbad Ordinance No. CS-184 and related staff report, of which we take official notice, and the comments made during the May 31, 2012 Business Meeting, we find that the project is in conformity with the ordinance and therefore no LORS override is necessary. We further find that the adoption is not significant new information under CEQA because it does not result in a new significant environmental impact from the project, a substantial increase in the severity of an environmental impact from the project, or create new feasible project alternatives or mitigation measures not previously analyzed because the ordinance is consistent with the RPMPD.

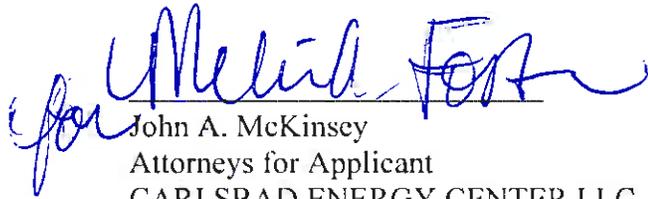
(Commission Adoption Order at p. 3.) The Commission properly determined that the Project complies with CS-184. The Petitions fail to raise any new evidence or mistake of law or fact to the contrary. Accordingly, the Commission should deny the Petitions.

### III. CONCLUSION

For all of the above reasons, the Project Owner respectfully urges the California Energy Commission to reject the Petitions for Reconsideration filed by the City of Carlsbad, Terramar, and Power of Vision.

Date: July 11, 2012

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**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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DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on July 10, 2012, I served and filed a copy of the attached:

**CARLSBAD ENERGY CENTER LLC'S OPPOSITION TO CITY OF CARLSBAD, TERRAMAR,  
AND POWER OF VISION'S PETITIONS FOR RECONSIDERATION**

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](http://www.energy.ca.gov/sitingcases/carlsbad/index.html).

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

**(Check all that Apply)**

**For service to all other parties:**

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

**AND**

**For filing with the Docket Unit at the Energy Commission:**

- by hand delivering an original paper copy and emailing an electronic copy to the address below (preferred method);

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- 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:

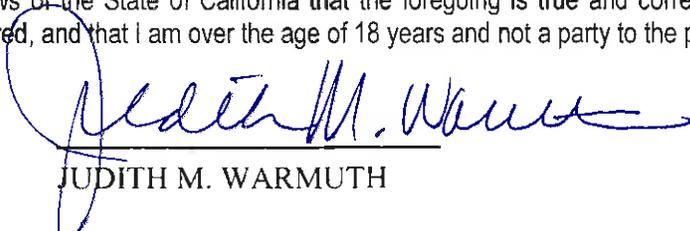
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**OR, if filing a [Opposition to] Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:**

- 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](mailto:mlevy@energy.state.ca.us)

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

  
\_\_\_\_\_  
JUDITH M. WARMUTH

\* indicates change