

BEFORE THE CALIFORNIA ENERGY COMMISSION
STATE OF CALIFORNIA

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

**STAFF RESPONSE TO MOTION FOR REVISED
PRELIMINARY STAFF ASSESSMENT**

On January 20, 2009, the City of Carlsbad (City) filed a "Motion for a Staff Revised PSA and Project Schedule Relief." The motion in essence requests that California Energy Commission staff (Staff) be required to produce a new Preliminary Staff Assessment (PSA) on the ground that the PSA analysis of visual impacts is in some measure inconclusive because of the interactive effect of a subsequent Caltrans freeway widening project. The City's motion argues that "[i]f Staff is compelled by schedule to issue an FSA which, for the first time, reflects Staff analysis of the . . . [freeway]widening impacts, a revised FSA will be required." (Motion, p. 4.) Intervenors Power of Vision and California Unions for Reliable Energy (CURE) filed support for the City's motion.

Staff urges the Carlsbad Committee to deny the motion for the following reasons. First, the motion is inaccurate, inasmuch as Staff *has* analyzed the impact of the Caltrans freeway widening project. The project description is still tentative, but staff has stated in the PSA that it is a foreseeable cumulative future impact that is potentially significant, inasmuch as the freeway widening will likely remove existing vegetation that will otherwise provide substantial visual screening of the Carlsbad Energy Center Project (CECP). The City's motion would suggest that Staff only became aware of this issue at the January 8, 2009 workshop, while in fact (as the PSA indicates) Staff has been concerned with this issue for at least six months. Although the freeway widening impact is described by Staff as potentially significant in the PSA, uncertainties remain because Caltrans has not yet fully defined the project, much less how it intends to mitigate for the impacts it will cause. The visual impact described by the PSA as potentially significant in a cumulative context is the result of the Caltrans freeway widening project, not the CECP project, and Caltrans will have a duty pursuant to CEQA to define, in its project description, a precise alignment and description of impact, as well as potential avoidance alternatives and feasible mitigation. These will presumably be included in Caltran's CEQA documents.

Secondly, the PSA is a document not required by law or regulation. It is an "extra credit" exercise to provide early and additional public access to agency analysis as that analysis is being developed. As the Carlsbad Committee presumably knows, this agency does not always prepare a PSA as part of its project analysis. When it does so,

it is quite common for certain information presented to be incomplete, and to include unresolved issues. CURE's contention that the PSA is the equivalent of a draft environmental impact report (DEIR) is simply incorrect. The California Energy Commission process is a certified regulatory program that does not, and is not required to, prepare a DEIR. Because use of the PSA is elective, and because the California Energy Commission certified licensing program includes multiple opportunities for comment and challenge, the legal requisites of the DEIR do not apply to the California Energy Commission licensing process, much less the PSA.

Dated: January 30, 2009

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard C. Ratliff". The signature is written in black ink and is positioned above a horizontal line.

RICHARD C. RATLIFF
Staff Counsel IV



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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APPLICATION FOR CERTIFICATION
FOR THE **CARLSBAD ENERGY
CENTER PROJECT**

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 1/12/2009)

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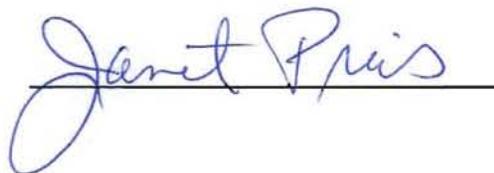
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DECLARATION OF SERVICE

I, Janet Preis, declare that on January 30, 2009, I sent copies of the attached Staff Response to Motion for Revised Preliminary Staff Assessment. Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink that reads "Janet Preis". The signature is written in a cursive style and is positioned above a solid horizontal line.

Attachment