ATTACHMENT RESPONDING TO APPLICANT'S REQUESTS FOR CHANGES TO CONDITIONS OF CERTIFICATION IN ITS OPENING BRIEF

Applicant's Opening Brief identified a number of proposed revisions to Staff's recommended Conditions of Certification ("COC"). These revisions were provided as exhibits to Applicant's Opening Testimony. *(See* Exs. 111 through 118.)

To summarize, the Applicant reviewed each section of the FSA and agreed with staff's assessment that the CECP would comply with all applicable LORS and would not result in significant adverse impacts to the environment. However, there were several COCs that the Applicant asked be reviewed and edited in the technical disciplines of Air Quality, Cultural Resources, Land Use, Hazardous Materials Management, Noise and Vibration, Soil and Water Resources, Traffic and Transporation and Worker Safety and Fire Protection.

1. Air Quality

Applicant indicated that in order to ensure that the Final CECP Decision comports with the Final Determination of Compliance issued by the San Diego Air Pollution Control District, edits be considered for conditions AQ-18, 19, 20, 29, 35, 43, 44, 55, 57, 64, 65, 69, 75, 76, 82, 83. 87, 89 and 90. The Applicant provided a comprehensive list of suggested edits in their Ex. 112, many of which are typographical errors or simple inconsistencies.
STAFF RESPONSE: **Support.**

2. Cultural Resources

CUL-6: Applicant seeks an edit to CUL-6, which would tailor the condition to the circumstances involved at the CECP site. These changes would avoid the continuous presence of
a Native American Monitor during any soil disturbance evolutions, since no areas of heritage or
religious significance exist within the Project site, and regulate archaeological monitoring as
done in other Commission projects. (Ex. 111 at p. 4:H and Ex. 117.)
STAFF RESPONSE: **Oppose**. While staff is willing to add clarifying language to CUL-6 for the specific instances when a Native American monitor would be required on site when cultural resources monitoring is being conducted, staff is unwilling to eliminate the need for Native American monitoring altogether.

3. Hazardous Materials Management

HAZ-9: A potential conflict between Noise and Vibration in Staffs Response to Comment 4.6-5 appears to assume that the Coastal Rail Trail is installed to the east of the
railroad tracks. This conflicts with HAZ-9, which prohibits the Project owner from granting an
easement for the Coastal Rail Trail east of the Rail Corridor on the CECP site. Applicant believes that the assumption in this section is neither critical nor necessary and the integrity of
CEC Staffs findings remain even if this assumption is removed. (Ex. 111 at p. 2:D.)
STAFF RESPONSE: **Support.**

4. Land Use

LAND-1: Applicant believes the proposed edit to LAND-1 will better specify and ensure that the Coastal Rail Trail is encouraged by CECP. Specifically, Applicant desires to clarify the
appraisal focus and process, should the Project owner and the City not be able to reach agreement on the location of an easement through the generating station property. (Ex. 111 at p.
2:B and Ex. 113.)
STAFF RESPONSE: **Support.** The applicant's suggested revisions to help clarify the appraisal focus and process do not change the intent of LAND-1. In addition, the city disagrees with the siting of the CRT west of the north/south ATS&F/North County Transit Rail District Corridor, despite staff's stated safety and security limitations and restrictions, which prevent the ability to site the CRT on the east of this corridor. As such, staff agrees the possibility exists that the applicant and the city of Carlsbad may not be able to reach an agreement on the location of an easement through the EPS property. Therefore, staff agrees that the clarification of the appraisal process will help ensure that LAND-1 is implemented as part of the CECP.

5. Soil and Water Resources

SOIL&WATER-1 and SOIL&WATER-3: Applicant requests a minor modification to SOIL&WATER-1 and SOIL&WATER-3 that will specify the City of Carlsbad should review
and comment only on the Storm Water Pollution Prevention Plan ("SWPPP") and not approve
the SWPPP as the conditions currently require. (Ex. 111 at p. 4:1 and Ex. 118 at pp 1-2.)
STAFF RESPONSE: **Support.**

SOIL&WATER-2: Applicant has suggested a minor edit to SOIL&WATER-2 to ensure the Project is not expected to use truck delivery for large volumes of reclaimed water for

construction purposes. (Ex. 111 at p. 4:1 and Ex. 118 at pp. 3-4.)
STAFF RESPONSE: **Support.**

SOIL&WATER-8: Applicant requests changes to SOIL&WATER-8 to require a water purchase agreement only if CECP is constructed to rely upon recycled water as its water supply.
(Ex. 111 at p. 4:I and Ex. 118 at pp. 2.).
STAFF RESPONSE: **Support.**

6. Traffic and Transportation

TRANS-5: Applicant requests a clarifying but minor change to TRANS-5 to specify that road repairs be made for actual damage to the roads caused by CECP. (Ex. 111 at p. 3:F and Ex.
115.)
STAFF RESPONSE: **Support.** While the intent if the condition is obvious to staff, we agree that the wording of TRANS-5 can be changed to more clearly indicate that it would only apply to roadway damage caused by CECP construction vehicles and associated construction activities.

7. Visual Resources

VIS-5: Applicant seeks minor changes to VIS-5 to better align the schedule components of the condition with potential development schedules of possible 1-5 widening alternatives.
Applicant also notes that endorsement of VIS-5 does not constitute a waiver of any right to
defend its property against any attempted, adverse taking by any branch of government. (Ex.
111 at p. 2:C and Ex. 114.)
STAFF RESPONSE: **Support.**

8. Worker Safety / Fire Protection

WORKER-SAFETY-8: Applicant requests adjustments to WORKER SAFETY-8 to clarify the staffing of the site at startup. (Ex. 1 1 l at p. 3:G, Ex. 116, and Trans. (02/04/10) at p.
29:9-30:2.)
STAFF RESPONSE: **Oppose.**