

STATE OF CALIFORNIA
Energy Resources Conservation
And Development Commission

In the Matter of:

**Application for Certification
For the Carlsbad Energy Center Project**

Docket No. 07-AFC-6

**BRIEF OF ENERGY COMMISSION STAFF REGARDING TOPICS
CONSIDERED AT THE DECEMBER 12, 2011, HEARING**

I. INTRODUCTION

The Carlsbad Energy Center Project (CECP) should be licensed, but that is not the same thing as saying that it should be built. The latter question will be a separate and later determination, answered with analyses of need and cost still being developed by the California Independent System Operator (CAISO), the Energy Commission, the California Air Resources Board (CARB), and the California Public Utilities Commission (CPUC). If the analyses being developed show that CECP is needed and that it is a least-cost source of the services it provides, it will receive a Power Purchase Agreement (PPA), and be built to serve system-wide and local-area reliability needs, allow for the retirement of all or part of the existing Encina facility pursuant to the State Water Board's Once-Through Cooling (OTC) Policy, and facilitate the integration of renewable generation.

The testimony at the December 12, 2011, hearing indicates that such decisions concerning "need" cannot be made at this time. Analysis currently under development—the 2010 and 2012 Long Term Procurement Plans, as well as the Energy Commission /CARB/CAISO area reliability studies—will not be available until well into 2012. These studies should ultimately answer the question of what

combination of gas generation and transmission projects best serve the unique needs of the San Diego and Southern California regions as well as the state as a whole. When these studies are complete, CECP should be among the options that can be chosen to serve that need.

The Committee noted at the December 12 hearing that the Energy Commission does not (since statutory changes enacted in the 1990s) make findings concerning the issue of project “need.” Thus, no resolution of this issue is necessary to license CECP. Much of the discussion at the December 12 hearing concerned the “PPA alternatives” (Pio Pico, Quail Brush, and Escondido), including whether those projects are an adequate generation alternative, and whether they are environmentally preferable. The testimony from Energy Commission staff (Staff) and the CAISO is that it is doubtful that the PPA Alternatives are an adequate substitute for CECP, and that all (PPA Alternatives plus CECP) or some subset of the projects (or some subset with various identified transmission upgrades) may be needed to satisfy reliability concerns and broader renewable integration requirements. Regarding environmental preference, the PPA Alternatives are not on the coastline, but otherwise offer no significant environmental advantage, and are actually worse from the standpoint of transmission project upgrades, use of potable water, and collective air emissions. (See Appendix A.)

Although the issue is not settled, it appears that CECP will likely need a federal Prevention of Significant Deterioration (PSD) permit. This is a preconstruction permit issued by the federal Environmental Protection Agency. Achieving the permit often takes more than one year, and the process is subject to indefinite delay by appeal and litigation. CECP may be needed to implement the State’s OTC policy as early as the end of 2017. Thus, it is prudent to license CECP now, so that it can embark on the federal process with a final state approval, such that the project will be in a position to begin construction when PSD compliance is achieved.

The CECP licensing process has now continued for four years. Many things have happened during that time, including the new OTC Policy, new federal rules for nitrogen

dioxide emissions, new federal PSD requirements for GHG emissions, and (most recently) changes to the City of Carlsbad (City) land use requirements that appear to make CECP inconsistent with some of them.

The City's recent changes are particularly important: previously, Staff believed CECP to be in conformance with all applicable laws, ordinances, regulations, and standards (LORS), including the City's land use provisions. Assuming that the project does not conform to the newly amended provisions, the Energy Commission is required to make the findings of "public convenience and necessity" for CECP in order to license the project.

The Commission should make such "override" findings so that it can license CECP. This will allow the project to be built *if* it is ultimately determined to be the best answer to reliability needs, the integration of renewable generation, and implementation of the OTC Policy. These benefits are well-supported by substantial evidence, and are referenced in the letter from the Deputy Director for the Siting, Transmission and Environmental Protection Division appended to this brief. (See Appendix B.)

II. CECP MAY BE ESSENTIAL FOR RELIABILITY AND SYSTEM RENEWABLES INTEGRATION, ALTHOUGH THIS DETERMINATION CANNOT BE MADE UNTIL FURTHER ANALYSIS IS COMPLETE.

The City contends that CECP is no longer needed because the three "PPA Alternatives" have been awarded proposed PPAs by San Diego Gas & Electric, and that the utility has indicated in its filing that this is all the new generation necessary to allow closure of the aging OTC facility at Encina. However, such conclusions are directly contradicted by testimony from Staff's Dr. Jaske as well as the CAISO's Mr. Sparks. Both of these witnesses cite new CAISO studies indicating that:

1. At much as 50 MW of generation must be located for reliability purposes at the CECP/Encina site (Exh. 230 [Jaske, p.2]);

2. Generation provided by CECP is the “far better means to mitigate reliability impacts resulting from increased levels of intermittent resources (Exh. 229 [Sparks, p. 6]);
3. CECP’s added capacity may be required even assuming the development of the PPA alternative projects” (Exh. 230 [Jaske, p. 2]);
4. Interactions between generation requirements in the LA Basin and San Diego increase the possibility that both Carlsbad and the PPA projects are needed, “since it is possible that locations for repowers are even more constrained in West LA Basin and other areas that simply have no air credits at all.” (Exh. 230 [Jaske, p. 3].)
5. Any attempt to replace Encina 1-5 generation with the PPAs would, at a minimum, result in “many transmission impacts” requiring “substantial transmission upgrades”, and more special protection systems, including replacement of an existing transmission line with completely new towers with an effect “similar to building an entirely new transmission line in terms of construction activity.” (Exh. 229 [Sparks, pp. 6-7], Exh. 230 [Sparks, pp. 1-2]).
6. The CAISO believes that “either repowering the existing Encina Power Station site or development of some project comparable to the proposed [CECP] will be necessary to allow the generating units at the Encina Power Station to comply with the [State Water Board] OTC Policy.” (Exh. 229 [Sparks, p. 8].)
7. Dr. Jaske has seen no technical analysis from SDG&E supporting its assertions to the CPUC that the PPA projects would provide regional local capacity needs that would allow the shutdown of Encina Units 1-5. (12/12/11 Tr. pp. 138-140.) This declaration is significant given Dr. Jaske’s critical role in analyzing both the new capacity needs for Southern California and his role at the Commission advising on implementation of the OTC Policy.
8. The potential closure of the San Onofre nuclear facility, currently up for relicensing and subject to a state initiative drive to shut it down, would result in large offsetting generation requirements at the CECP/Encina site. (Exh. 230 [Jaske p. 3].)
9. The more definitive analyses regarding what combination of power plant generation and transmission projects is optimal for the San Diego and LA Basins will be much clearer in six to twelve months, both from the CPUC’s

Long Term Procurement (LTTP) proceedings and the CARB/Energy Commission/CAISO capacity need analyses currently being conducted.

In short, the PPA Alternative projects are at best only part of the answer, not the complete answer that the City claims them to be, regarding electric system reliability and renewable integration. They do not satisfy the CECP project objectives of closing the Encina facility, do not satisfy the OTC policy, and do not satisfy system-wide and local-area reliability needs. The system studies currently going forward will determine the optimal mix of generation and transmission additions, and these studies will provide a much better answer in 2012. CECP should be among the available resources when that analysis is completed.

III. The “PPA Alternatives” are not Environmentally Preferable to CECP.

As discussed above, the “PPA Alternatives” are not in fact feasible alternatives to CECP, as they do not satisfy fundamental project objectives. They are not in the same “electrical location,” and thus do not allow the shutdown of the aging Encina power plant facilities, do not provide necessary local reliability, do not accomplish OTC Policy objectives, and are less effective for integrating renewables.

Nor are the PPA Alternatives environmentally preferable. Although they do not appear (based on the preliminary issues identification reports from Staff on the two jurisdictional projects) to be projects with significant impacts that cannot be mitigated, such is also true for CECP. In addition, they require major transmission reconstruction (some of which will occur in an urban setting), are less fuel-efficient, and have higher GHG emissions. (Exh. 230 [Walters, pp. 1-2; Monasmith, pp. 1-2; Sparks 1-2].) For convenience, Appendix A summarizes the Staff’s comparison of the PPA Alternatives to CECP in accordance with its testimony and the discussion at the December 12 hearing.

IV. Staff's Analysis of the "PPA Alternatives" for Comparative Environmental Impact and Cumulative Impacts is Sufficient, and the City's Criticisms of it are Misplaced.

At the Energy Commission adoption hearing on the Presiding Member's Proposed Decision (PMPD) on June 30, 2010, Staff requested that the project not be approved so that it could provide additional analysis of the PPA Alternatives. (6/30/11 Tr. p.78.) The PPA Alternatives had not existed when Staff prepared its Final Staff Assessment (FSA), nor did they exist when evidentiary hearings were held. However, during 2011 the PPA Alternatives became known, and were proposed by the City as alternatives to CECP. Despite the somewhat contingent nature of the PPA Alternative projects (one had only recently filed an application to the Energy Commission, one is not subject to Energy Commission jurisdiction, and the other had not filed an application), Staff decided that cumulative impact and comparative analysis of such alternatives was appropriate, and asked for a delay in project certification so that it could provide it. In doing so, contrary to the suggestions of the City, it treated the PPA Alternative projects as "a probable future project."

In August 2011 Staff filed additional analysis of the comparative impacts of the PPA alternatives, emphasizing their contingent nature. For the cumulative impact analysis, Staff determined that, because the projects were quite distant from CECP, the only cumulative impact would be to regional air quality. (Exh. 230 [Walters p. 3].) Air quality had been addressed in the FSA (and by reference in the supplemental testimony) by *both* a "summary of projections" approach summarizing the air district's air quality maintenance programs, but also through a "list" approach; the supplemental testimony in essence added these projects to the list of projects to be considered in concert with CECP for air quality purposes. (Exh. 229, pp. 6-10.)

Thus, Staff more than fulfilled the CEQA obligation to consider cumulative effects by *either* the "summary of projections" or the "list" approach. The criticisms of the Staff testimony in the City's Brief from Mr. Hogan do not even acknowledge the "summary of projections" analysis, and remarkably fails to acknowledge that the very purpose of the

supplemental testimony was to extend the “list” to projects that did not exist when the FSA was written. The analysis was performed and was a robust “belt and suspenders” approach. The conclusion was that impacts would be less than cumulatively considerable. (Exh. 230, [Walters p. 3].)

Contrary to the City’s suggestions in Mr. Hogan’s brief, Staff also considered the “no project” alternative for CECP in light of the PPA Alternatives. (Exh. 229, pp. 2-5; Exh. 230 [Jaske pp. 1-3].) That testimony indicated that, assuming CECP is not built, the Encina projects might be expected to run longer and beyond OTC Policy dates, that renewable integration services would be degraded, and that reliability would suffer (with or without the PPA Alternative projects). (*Ibid.*) Moreover, Staff’s testimony indicates that the PPA Alternatives have doubtful feasibility, result in transmission building impacts and water impacts that do not result from CECP, and are “better” than CECP only in that they ameliorate impacts (e.g., visual, fire safety) that are, with mitigation, less than significant. (Exh. 230 [Jaske pp. 1-3] [Monasmith pp. 1-3].)

Mr. Hogan’s brief includes a rather abstract criticism of the PMPD, contending that CEQA compels agencies to “consider these significant effects in its findings regarding alternatives, including the “No Project” Alternative, even if they can be mitigated by the proposed conditions of certification.” (Exh. ___ [unnumbered p. 5].) The City cites *Kings Co. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732, to support its point. This claim is overly simplistic, and reads more into *Kings County* than the cited case will support.

First, *Kings County* provides that a lead agency has “two obligations”: “It is responsible for ensuring the EIR contains a meaningful discussion of alternatives and mitigation measures which would avoid or substantially lessen the damage associated with the project as proposed, and, if it concludes the project will have one or more significant effects, it must make findings on the record regarding the feasibility of such alternatives.” (*Kings Co., supra*, at p. 731.) The Staff’s analysis has compared the PPA Alternatives to CECP for their varied environmental impacts, and Staff has also found

that the PPA Alternatives are not “feasible” alternatives in that they do not appear to meet critical project objectives. Moreover, the CECP project has no significant effects, a determination made in the PMPD.

Second, *Kings County* addressed a very different situation. In that case, a significant impact of the project was air emissions from a coal plant. Data was readily available that allowed a comparison of such emissions to a natural gas facility (with far lower emissions); the DEIR merely stated that natural gas plants would have “somewhat lower” emissions without providing a readily available quantitative comparison. (*Kings Co, supra, at 732.*) Significant comment on the DEIR requested that the analysis include the qualitative comparison. The Planning Commission rejected the EIR as inadequate for lack of such comparative data, but the project proponent refused to correct it, instead offering vague and unsupported argument that a gas-fired project was infeasible. (*Ibid.*) The City Council nonetheless approved the project without a useful comparison to a gas-fired project. The Court held that the EIR discussion was inadequate, and that the EIR must include a reasonable discussion of alternatives (presumably including a comparison of coal plant emissions to gas plant emissions) even where the EIR (or the certifying lead agency) would otherwise conclude that there are no significant cumulative impacts from the project. (*Ibid.*)

Thus, the circumstances addressed by *Kings County* were quite different from those of the present case, and the case provides doubtful support of the City’s contention. Rather, it restates that a “reasonable range of alternatives” that “permits a reasonable choice of alternatives” is required in such analysis, supported by “adequate information” about such alternatives. Staff has provided such analysis of the PPA Alternatives both with regard to their feasibility (failure to satisfy critical project objectives) and comparative environmental impacts.

Even so, Staff believes that the PMPD language cited by Mr. Hogan is unnecessary and should be removed from any future version of the PMPD. Rather, the PMPD should find that: (1) the PPA Alternatives do not appear to be feasible, as the testimony

indicates that they are unlikely to meet essential project objectives such as providing local reliability, helping meet OTC objectives and timetable, and maximizing the integration of renewables; (2) the PPA Alternatives offer insignificant environmental benefits and have burdens of their own, including higher air emissions, proposed potable water use, and significant required transmission construction (with attendant environmental effects).

V. The Energy Commission Should Make the “LORS Override” Findings Required by Public Resources Section 25525.

The City has developed a different “vision” for how the Encina site could be used, and that vision no longer includes even a smaller, lower-profile power plant such as CECP. Staff agrees with the City that a LORS “override” should not be taken lightly, and should be avoided where possible as such overrides impose industrial projects on unwilling communities, contrary to local control.

Staff nevertheless recommends that the Committee PMPD include LORS override findings. If it does not do so, CECP will cease to be among the options that the procurement process will eventually draw from to determine what is needed. It may be that CECP, or a project like it in the same reliability area, is necessary for electric reliability, timely shutdown of OTC facilities, and integrating renewable generation. If this proves not to be the case (as the City contends), then CECP will, despite its state license, never be built. However, if the Southern California reliability studies and LTTP studies show that CECP is among the combination of projects that best address these important regional and state objectives, CECP will be available to satisfy that need. It would be unfortunate to allow the City’s opposition to eliminate CECP as an option before its potentially critical value has been determined by ongoing studies.

Staff’s FSA analysis indicates that the environmental impacts of the project can be mitigated to levels that are less than significant, and that until the City recently changed its land use provisions, CECP was consistent with all LORS. Last summer, when the

PMPD was up for Energy Commission adoption, no override would have been required. It now is, but that should not change the outcome.

Date: January 10, 2012

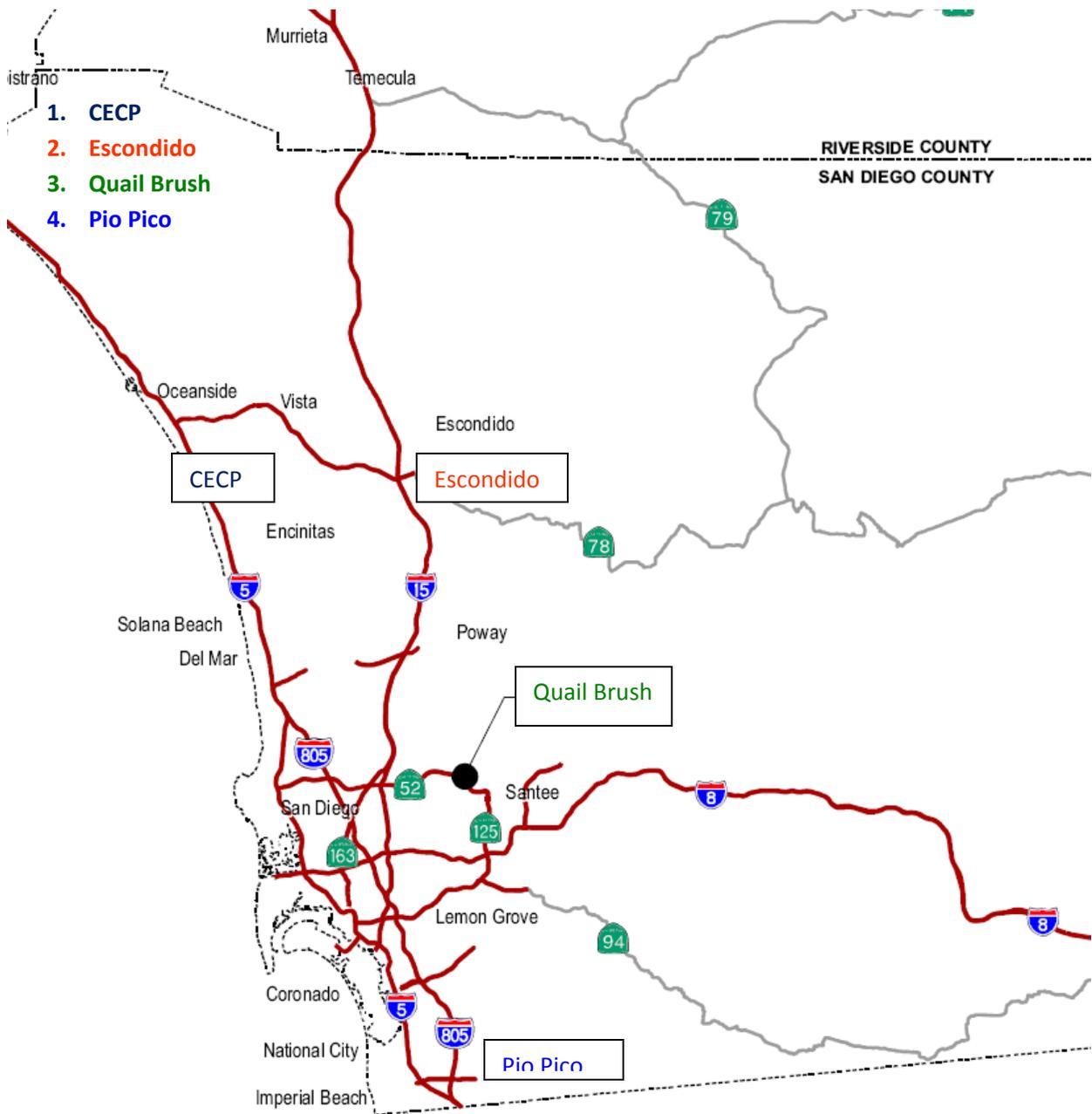
Respectfully submitted,

RICHARD C. RATLIFF
Staff Counsel IV
California Energy Commission
1516 9th Street, MS 14
Sacramento, CA 95814
Tel: (916) 653-1653
Fax: (916) 654-3843
E-mail: dratliff@energy.state.ca.us

CECP / PPA Comparative Chart

	Carlsbad Energy Center Project	Pio Pico Energy Center	Quail Brush Generation Project	Escondido Energy Center
Ownership	NRG	Apex Power Group	Cogentrix Energy	Wellhead
Configuration	Two Combined Cycle Power Blocks	Three Combustion Turbine Peaking Units	Eleven Reciprocating Engines	One Combustion Turbine
Power Output (approx. net)	540 MW	300 MW	100 MW	45 MW
Site size	23 acres	10 acres	22 acres	N/A
Distance to 138-kV Power Line	On-Site	N/A	N/A	N/A
Distance to 230-kV Power Line	150 ft.	2,100 to 2,650 ft.	4,800 to 8,000 ft.	N/A
Natural Gas Line	1,100 ft.	10,300 ft.	2, 200 ft.	N/A
Water Resource	On-site desal unit / reclaimed permitted if/when available	Potable water use until late 2014 (reclaimed plan under consideration)	Potable water via two 6,500 gallon trucks (delivered daily)	N/A
Immediate Access	YES	TBD	TBD	N/A
Distance to nearest resident	.3 mile	.9 mile	.3 mile	.3 mile
Nearest "Sensitive Receptor"	.5 mile	.9 mile	.3 mile	N/A
Compliance w/ Local LORS	NO	YES	NO	YES
Site Control	YES	YES	YES	YES
Current PPA	NO	Pending	Pending	Pending
Potentially Significant Environmental Impact area(s) of concern*	N/A	Transmission System Engineering	Land Use	N/A

* (Tentative – based on *Issues Identification Reports* – subject to ongoing review/development)



Memorandum

To: Carlsbad Energy Center Project Siting Committee
Commissioner Karen Douglas, Presiding Member

Date : January 10, 2012

Telephone: 654-5100

From : **California Energy Commission ROGER E. JOHNSON, Deputy Director, STEP**
1516 Ninth Street
Sacramento CA 95814-5512

Subject: Energy Commission "Override" Findings Pursuant to
Public Resources Code Section 25525 for the Carlsbad Energy Center Project, 07-AFC-6

The Energy Commission staff's Final Staff Assessment (FSA) analysis of the Carlsbad Energy Center Project (CECP) concluded that the project would provide significant regional and statewide benefits, comply with all applicable laws, and impose no environmental impacts that cannot be mitigated to levels that are less than significant.

Since the FSA was published several notable events have occurred. First, the State Water Board adopted what is known as the Once-Through Cooling Policy (OTCP), requiring significant reduction of ocean water use for power plant cooling. Second, San Diego Gas and Electric proposed to award Power Purchase Agreements (PPAs) to three peaker power plants in the San Diego region. Third, the City of Carlsbad (City) amended its land use ordinances so that they are now inconsistent with CECP. Finally, the Energy Commission, California Air Resources Board, California Public Utilities Commission, and California Independent System Operator (CAISO) have initiated more specific electric system studies to determine what additional gas-fired generation and transmission upgrades will best meet the State's goals of electric system reliability, renewable power integration, and OTCP compliance. These studies are underway and will not be complete until later this year, at the earliest.

The City and others have argued that the benefits CECP would provide will otherwise be provided by the three projects with proposed utility PPAs. However, testimony at the most recent hearings on the matter indicate that such a conclusion is unwarranted. The CAISO has testified that the CECP location offers unique benefits for "sub-area reliability, and that the project may be essential for integrating renewable generation, regional reliability, and timely compliance with the OTCP. Furthermore, two of the projects are currently under permitting review by the Energy Commission, and it is premature and inappropriate to assume that those projects will be certified by the Energy Commission for other than analytic purposes.

Accordingly, Energy Commission staff recommends that the Presiding Member's Proposed Decision propose that the full Commission make the finding that the CECP facility is "required for public convenience and necessity" pursuant to Public

Resources Code Section 25525. This would allow the Commission to license CECP despite the City's recent amendments to its land use provisions to prevent that action.

Without such findings, CECP will not be an option for meeting the important State goals of system reliability, integration of renewable power, and curtailment of once-through cooling for power generation. It is important that CECP be such an option, as CECP may be the optimal choice (or among the optimal choices) for meeting these important State and regional goals.



**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 9/19/2011)**

APPLICANT

Jennifer Hein
George Piantka, PE.
NRG Energy, Inc., West Region
5790 Fleet Street, Ste. 200
Carlsbad, CA 92008
jennifer.hein@nrgenergy.com
george.piantka@nrgenergy.com

APPLICANT'S CONSULTANTS

Robert Mason, Project Manager
CH2M Hill, Inc.
6 Hutton Centre Drive, Ste. 700
Santa Ana, CA 92707
Robert.Mason@ch2m.com

Megan Sebra
CH2M Hill, Inc.
2485 Natomas Park Drive, Ste. 600
Sacramento, CA 95833
Megan.Sebra@ch2m.com

COUNSEL FOR APPLICANT

John A. McKinsey
Stoel Rives, LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
jamckinsey@stoel.com

INTERESTED AGENCIES

California ISO
e-mail service preferred
e-recipient@caiso.com

Terramar Association
Kerry Siekmann & Catherine Miller
5239 El Arbol
Carlsbad, CA 92008
e-mail service preferred
siekmann1@att.net

INTERVENORS

City of Carlsbad
South Carlsbad Coastal
Redevelopment Agency
Allan J. Thompson
21 "C" Orinda Way #314
Orinda, CA 94563
e-mail service preferred
allanori@comcast.net

City of Carlsbad
South Carlsbad Coastal
Redevelopment Agency
Joseph Garuba,
Municipals Project Manager
Ronald R. Ball, Esq., City Attorney
1200 Carlsbad Village Drive
Carlsbad, CA 92008
e-mail service preferred
Joe.Garuba@carlsbadca.gov
e-mail service preferred
ron.ball@carlsbadca.gov

California Unions for Reliable Energy
(CURE)
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
gsmith@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

Center for Biological Diversity
c/o William B. Rostov
EARTH JUSTICE
426 17th Street, 5th Floor
Oakland, CA 94612
e-mail service preferred
wrostov@earthjustice.org

Power of Vision
Julie Baker & Arnold Roe, Ph.D.
4213 Sunnyhill Drive
Carlsbad, California 92013
e-mail service preferred
powerofvision@roadrunner.com

Rob Simpson
Environmental Consultant
27126 Grandview Avenue
Hayward, CA 94542
e-mail service preferred
rob@redwoodrob.com

April Rose Sommer
Attorney for Rob Simpson
P.O. Box 6937
Moraga, CA 94570
e-mail service preferred
aprilsommerlaw@yahoo.com

**ENERGY COMMISSION –
DECISIONMAKERS**

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

*KAREN DOUGLAS
Commissioner and Associate
Member
kldougla@energy.state.ca.us

*Galen Lemei
Adviser to Commissioner
Douglas
e-mail service preferred
glemei@energy.state.ca.us

Tim Olson
Adviser to Vice Chair Boyd
tolson@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

ENERGY COMMISSION STAFF

Mike Monasmith
Siting Project Manager
mmonasmi@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

**ENERGY COMMISSION – PUBLIC
ADVISER**

Jennifer Jennings
Public Adviser's Office
e-mail service preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Elizabeth Stewart, declare that on, January 10, 2012, I served and filed copies of the attached Brief of Energy Commission Staff Regarding Topics Considered at the December 12, 2011 Hearing, dated January 10, 2012. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of 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 **NOT** marked "e-mail service preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- 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. 08-AFC-11
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.

Originally Signed by
Elizabeth Stewart