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January 30, 2009

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VIA HAND DELIVERY

The Honorable James D. Boyd
The Honorable Karen Douglas
Siting Project Committee
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
07-AFC-6	
DATE	JAN 30 2009
RECD.	JAN 30 2009

**Re: Carlsbad Energy Center Project (07-AFC-6)
Applicant's Status Report (January 2009)**

Dear Commissioners:

The Committee's November 12, 2008 Revised Scheduling Order requires all parties to submit Status Reports on or before January 30, 2009 and "every six weeks thereafter until [the Final Staff Assessment has been] filed." To that end, Carlsbad Energy Center LLC ("Applicant") submits this Status Report on the Carlsbad Energy Center Project ("CECP").

CRITICAL PATH ISSUES

The Application for Certification ("AFC") for CECP remains the critical path item for bringing this important regional energy project online to help meet San Diego's critical need for new, clean, highly efficient, and air cooled power generating resources that will replace aging once-through cooled power generating units and that will provide backup for intermittent renewable resources. While CECP is designed to provide long-term electrical resource solutions for the region, a substantial benefit of the project is that it would also come online during the short-term critical need period as determined by San Diego Gas and Electric and the California Public Utilities Commission to be within the years 2010-2012.¹ This short-term need has become even more critical due to the delays to other regional resources including transmission projects and

¹ As demonstrated in the California Public Utility Commission's November 6, 2008 Decision No. 08-11-008 authorizing SDG&E to procure 530 megawatts of new local capacity and also SDG&E's March 9, 2007 Request for Offers for new resources with online dates during 2010-2012.



The Honorable James D. Boyd
January 30, 2009
Page 2

peaking generation projects. Unfortunately, the current pace of the CECP AFC process is already hindering timely delivery of CECP within this critical need period; further delay will continue to hinder this valuable role of CECP and put off the project's substantial local and regional economic benefits in the form of over 350 peak construction jobs and tens of millions of dollars in local spending and revenues to local and state government.

STATUS SUMMARY

The Preliminary Staff Assessment ("PSA"), which was published on December 11, 2008, is a very thorough analysis of CECP that will shortly facilitate a Final Staff Assessment ("FSA"). California Energy Commission ("CEC") Staff has also agreed to further accommodate the community by pre-planning for a workshop after the FSA. CECP has numerous intervenors in the proceeding, reflecting the sophisticated and involved community in which it is located. The remaining unresolved issues amongst the parties, however, will not prevent publication of the FSA nor present any problems during evidentiary hearings. Applicant remains committed to completing the permitting process and seeing CECP built to serve the region and, therefore, urges the Committee to continue to press CECP forward as rapidly as is possible.

RECENT ACTIVITIES

On December 26, 2008, the Committee issued its ruling on intervenor Center for Biological Diversity's ("CBD") petition for order directing response to data responses. The Committee's order required the Applicant to respond to specific data requests on or before January 26, 2009. Applicant timely provided responses to CBD's data requests as ordered by the Committee.

On January 7 and 8, 2009, CEC Staff conducted workshops related to the PSA. The two-day event provided all parties, CEC Staff, and the Applicant an opportunity to obtain clarification on specific issues, request information, and gain a better understanding of the overall project and the PSA. Applicant believes the workshops enabled the parties to better prepare their respective comments on the PSA.

Data Responses

As noted above, Applicant prepared responses to CBD's data requests pursuant to the Committee's December 26, 2008 order. Such responses were filed on January 26, 2009.

Additionally, CEC Staff issued Air Quality Data Requests, Set 4 on January 22, 2009, requesting supplemental information intended to harmonize the San Diego County Air Pollution Control



The Honorable James D. Boyd
January 30, 2009
Page 3

District's Preliminary Determination of Compliance with the upcoming FSA. Applicant fully intends to provide timely responses to this data request that will allow for timely publication of the FSA by late March 2009, as directed by the Committee Schedule.

CURRENT ISSUES AND ACTIVITIES

Comments on Preliminary Staff Assessment

Comments to Staff's PSA are due on or before January 30, 2009. Since the PSA workshop, Applicant has been diligently reviewing the PSA and addressing issues identified therein and any issues that arose during the PSA workshop. Applicant is submitting its PSA comments to Staff in a timely manner and concurrent with this Status Report.

Final Staff Assessment

According to the existing Committee Scheduling Order, the FSA is expected to be published by the end of March 2009. Applicant looks forward to timely publication of the FSA and will work with Staff to resolve any outstanding issues related to the FSA prior to the end of March 2009 to ensure its publication in accordance with the timeline provided in the Scheduling Order.

I-5 Widening and Attempts to Delay CEC

During both the PSA workshop and via a motion to this Committee filed by the City of Carlsbad, various intervenors have attempted to delay CEC from moving through the CEC licensing process in a timely manner. Intervenors cite a variety of reasons for seeking the delay, the most prevalent of which is Caltrans' potential future widening of Interstate 5 just east of the CEC site. Applicant does not agree that the CEC process should be delayed. In fact, the project is very well developed as Applicant has consistently been working with CEC Staff and the public to move the project forward since the AFC was deemed complete in October 2007. The project has been pending before the CEC for more than fifteen months and is proceeding appropriately, if not too slowly, through the twelve-month CEC licensing process. To that end, the Applicant strongly urges the Committee to continue the project's momentum toward a Final Decision.

To date, and of utmost importance, Caltrans has yet to determine any alignment for the widening of Interstate 5 adjacent to the CEC site. Caltrans has only preliminarily and informally developed four alternative alignments for the widening, and has yet to choose any alternative as a preferred alignment. Further, Caltrans has not initiated its environmental review of the widening of Interstate 5 in the Carlsbad vicinity or released a draft environmental impact report ("DEIR")



The Honorable James D. Boyd
January 30, 2009
Page 4

for public comment. In many instances, the preferred “project” is evaluated in a DEIR and is revised after the lead agency receives public comment on the contents of the DEIR.

Although an agency must interpret the inclusion of probable future projects into its cumulative analysis to “afford the fullest possible protection of the environment” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 867), premature environmental review that requires rank speculation as to possible future environmental consequences is considered a wasteful drain of public funds. (*Env’t Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1028 (quoting *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 395).) It is, therefore, unnecessary to engage in “sheer speculation as to future environmental consequences.” (*Env’t Council*, 142 Cal.App.4th at 1028.) Until specific measures or projects are adopted and the details are fleshed out, the environmental impacts remain “abstract and speculative.” (*Id.* (quoting *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1025).) Simply put, “an EIR is not required to include speculation as to future environmental consequences of future development that is unspecified and uncertain.” (*Id.*) Therefore, while the widening of Interstate 5 is a foreseeable event, its potential impact on CECP, if any at all, is purely speculative. Hence, the extent to which the Interstate 5 widening project can be evaluated, or its contribution to a cumulative impact when considered with CECP, is speculative at this time.

Further, Applicant is satisfied that the conditions offered in the PSA, such as Visual Resources-2, establish the necessary, required visual and other requirements for CECP to ensure the project will be constructed and operated in the safe, barely noticeable, un-obtrusive manner it has been planned. If and when Caltrans does modify the I-5 freeway in the vicinity of the power plant, it will be obligated to respect the requirements of its sister agency, the CEC. Fortunately, there is ample undeveloped space in that area to ensure Caltrans will have plenty of options.

City Data Requests

On January 22, 2009, the City of Carlsbad sent a letter to Mike Monasmith, CEC Siting Project Manager, regarding the City of Carlsbad’s supposed data requests submitted to CEC Staff in response to Applicant’s July 25, 2008 Project Enhancements and Refinements document. At the time the City submitted these requests, CEC Staff determined only certain requests required responses in order for Staff to issue the PSA. Applicant responded to such requests in October 2008. Nevertheless, Applicant is willing to work with the City and CEC Staff to provide responses to any remaining, relevant requests in a timely manner but believes that such information should not cause a delay in the publication of the FSA and should be treated no



The Honorable James D. Boyd
January 30, 2009
Page 5

differently than if it were written testimony shared amongst the parties prior to evidentiary hearings.

CONCLUSION

As always, Applicant is committed to providing, to the extent feasible, information that may assist CEC Staff with moving toward the publication of the FSA.

Respectfully submitted,

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JAM:kjh

cc: See Proof of Service

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APPLICATION FOR CERTIFICATION
FOR THE CARLSBAD ENERGY
CENTER PROJECT

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

Applicant's Status Report – January 30, 2009

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DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on January 30, 2009, I deposited copies of the aforementioned document in the United State mail at 980 Ninth Street, Suite 1900, Sacramento, California 95814, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

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.



Elizabeth Hecox