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VIA EMAIL AND US POSTAL SERVICE

Arnold Roe, Ph.D.
Power of Vision
PO Box 131302
Carlsbad, CA 92013

Re: Carlsbad Energy Center Project (07-AFC-6)
Applicants Objections to Power of Vision's Data Request #1

Dear Dr. Roe:

On or about June 1, 2009, Applicant Carlsbad Energy Center LLC ("Applicant") received a request for data from Power of Vision ("POV") related to the Carlsbad Energy Center Project ("CECP"). In its letter, POV asked to inspect and copy Encina Power Station ("EPS") records providing hourly data on the times of operation, fuel consumption, and NOx emissions for EPS Units 1 through 5.

Applicant objects to POV's data request on several grounds. First, POV's data request is untimely. Second, the information requested by POV exceeds the scope of the CECP application for certification ("AFC") proceeding and will not lead to the finding of relevant information. Lastly, POV requests inspection of documents that are numerous in volume and, therefore, is an unduly burdensome request.

Applicant recognizes POV's right as an intervenor to this proceeding, as well as Applicant's duty to respond to all timely and relevant data requests related to CECP. (20 Cal. Code Regs. § 1207, 1216(b).) However, Applicant objects to POV's late filing of any data requests for CECP. Under the California Energy Commission's ("CEC") regulations, all requests for information shall be submitted no later than 180 days from the date the CEC determines an AFC is complete, unless the CEC committee conducting the AFC proceedings allows requests for information at a later time for good cause. (20 Cal. Code Regs. § 1716(e).) The CEC found the CECP AFC was complete or "data adequate" on October 31, 2007. Therefore, all requests for information from the CEC or other parties to this AFC proceeding were required to be filed before May 2008, except for good cause. POV's data request is untimely and no good cause exists to allow further requests for information.

Oregon Washington
California Utah Idaho Colorado Minnesota

In addition, POV's request exceeds the scope of the proceeding and the information sought will not add value to the AFC process. POV has requested original records of operational data for EPS Units 1 through 5 for years of operation that are not relevant to CECP. To the extent that POV holds the opinion that operational data from 2007 and 2008 is relevant to this proceeding, Applicant has already provided a great deal of 2007 and 2008 data for Units 1 through 5 in response to Center for Biological Diversity data requests and in response to questions from the San Diego Air Pollution Control District ("SDAPCD"). CEC regulations giving any intervenor the right to request additional information of an applicant are not intended to allow an intervenor to enter an applicant's facility to review raw data from the applicant's operation of related facilities, simply because an intervenor doubts the veracity of information that the applicant has already provided. It is inappropriate for POV to question Applicant's candor in providing information regarding CECP and EPS, particularly given the facts supporting the data reported for Units 1 through 5, explained below.

Further, POV's request to inspect documents related to hourly data, relied upon to produce reports to SDAPCD, is an unreasonable and overly burdensome request. The documents POV seeks to inspect are not publicly available. Rather, the documents are relied upon by Applicant's consultants when preparing specific reports required by SDAPCD. To make these documents available would take significant time, resources, and personnel and, in the end, would not result in valuable or relevant information.

Notwithstanding the foregoing objections, Applicant provides the following clarification on the monitoring and reporting methods at EPS, which should assist POV with understanding the data provided for Units 1 through 5. Applicant's consultant, Sierra Research, has reviewed the hourly and/or daily data used to compile the operating hour totals for EPS Units 1 through 5 in 2007 and 2008 which POV notes in its letter. It is necessary to take several factors into consideration when comparing various sets of EPS data:

- Operating hours listed in the Center for Biological Diversity Data Responses, Table DRC3-1, were derived from the facility's CAB I Availability reports, which only count hours when the units are producing power, or megawatts (MW), during normal operation. However, the SDAPCD Rule 69 Compliance reports count operating hours as all hours when fuel is flowing to the units, meaning during periods of startup, shutdown, and normal operations, which explains why the Rule 69 operating hours per year are always greater than the hours listed in the CAB I Availability reports for the same unit and year. For instance, out of the 1,476 operating hours listed in the Rule 69 report for Unit 1 in 2007, no power was generated during 141 of the hours, meaning those hours were excluded from the operating hour total in the CAB I Availability report. Similarly, for

Unit 3 in 2008, power was not generated during 106 out of the 1,891 hours listed in the Rule 69 report. In both of these examples, the majority of the difference in operating hours, 148 hours and 126 hours respectively, between the two data sources is explained by the difference in reporting methods used for the CAB I Availability reports and the Rule 69 reports.

- The CAB I Availability and Rule 69 reports are based on different data sources at the facility. Operating hours for the CAB I Availability reports are obtained through daily manual readings taken by facility personnel from fuel use meters on the units. Conversely, operating hours contained in the Rule 69 reports are derived from electronic data logging systems. As a result, differences in the clocks used for both recording methods, as well as the precision of the recordkeeping, lead to minor differences in the recorded daily operating times. In the examples discussed above, the recording method differences, when accumulated over the course of a year, added up to 7 hours for Unit 1 in 2007 and 20 hours for Unit 3 in 2008.

Combining the differences attributable to multiple reporting and recording methods explains 100% of the difference between the operating hours listed in the Center for Biological Diversity Data Responses, Table DRC3-1, and the hours in the Rule 69 reports. As a result, the operating hours listed in both reports are correct and simply represent different methods of counting operating hours.

The second issue presented by POV deals with EPS's days of operation per year. First, POV compared the hours from the Rule 69 report, which contains all hours during which fuel was flowing, with the "2007 – 2008 Fuel Use and NOx Emissions Information" report prepared by Sierra Research, which only counted hours of power production. As a result, POV compared datasets derived from different reporting methods, producing inaccurate hour per day calculations. POV should have compared the Sierra Research day counts with the Center for Biological Diversity Data Responses hour counts. For all units and years, except Unit 1 in 2008, this comparison results in values that are less than the limit of 24 hours per day; therefore, the data are accurate and should not be changed

With respect to the 2008 day count for Unit 1, analysis of the raw data confirmed that power was generated on 11 days. However, the hours of operation count, 301 in the Center for Biological Diversity Data Responses document, is incorrect. The hour count mistakenly contains 96 hours of operation time during the first four days of 2008, likely due to a typographical error in the manually maintained operational log or during data entry into electronic records. As a result, the hour total should be 205, producing a very reasonable value of 18.6 hours of operation per day

for Unit 1 in 2008. Additionally, a review of facility records confirmed that Unit 1 did not operate until late-April 2008 and Rule 69 and additional reports accurately show that no fuel was burned and the unit did not generate any power in January 2008, meaning the error did not impact the unit's fuel use, power output, or emissions totals for the year.

Pursuant to the above information, the operating hour differences presented by POV are not errors in reporting, but simply the result of various reporting and recordkeeping criteria and methods between multiple reports. POV's only reason for requesting inspection of Applicant records was to "determine whether other data reported by the applicant as far back as the year 2002 … are accurate … ." Given the clarification provided here regarding the monitoring and reporting for EPS Units 1 through 5, Applicant sees no need for POV to inspect and copy Applicant's records of hourly data, as requested.

With these objections and the afore-described clarification, Applicant has no further intent to respond to POV's data request at this time.

Very truly yours,

John A. McKinsey

JAM:kjh
cc: See Attached Proof of Service

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION FOR THE CARLSBAD ENERGY CENTER PROJECT	**Docket No. 07-AFC-6** **PROOF OF SERVICE** **(Revised 5/19/2009)**

Carlsbad Energy Center Project

Applicant's Objections to Power of Vision's Data Requests #1

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DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on June 19, 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

Elizabeth Hecox