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October 27, 2009

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BY HAND DELIVERY AND EMAIL

Mr. Mike Monasmith, Siting Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

**Re: Carlsbad Energy Center Project (07-AFC-6)
Correspondence to Carlsbad Mayor and Council Members**

Dear Mr. Monasmith:

On behalf of Carlsbad Energy Center LLC, please find enclosed for docketing comments submitted collectively by Carlsbad Energy Center LLC and Cabrillo Power I LLC to the City of Carlsbad's ("City") Mayor and Council members regarding the City's proposed ordinance CS-067. The proposed ordinance came before the City council on October 20, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John A. McKinsey".

John A. McKinsey

JAM:kjh

Enclosure

cc: See Enclosed Proof of Service

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October 20, 2009

HAND DELIVERED

Mayor Lewis and Councilmembers
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Re: October 20, 2009 Meeting Agenda Item #17
Proposed Urgency Ordinance (CS-067)

Dear Mayor Lewis and Councilmembers:

We are special counsel to Cabrillo Power I, LLC, owner/operator of the entire Encina Power Station (EPS), and Carlsbad Energy Center, LLC, applicant before the California Energy Commission (CEC) for certification of the Carlsbad Energy Center Project (CECP). Both entities are subsidiaries of NRG Energy, Inc. and will collectively be referred to in this letter as "Cabrillo".

Cabrillo sincerely regrets needing to appear here this evening to address the City's efforts to adopt a claimed "emergency" ordinance (CS-067) in furtherance of the City's continuing efforts to block and frustrate the CEC's careful and exhaustive consideration of the CECP. The CECP represents a long standing planned effort to improve the region's critical electrical energy production through the approval of new, modern, efficient, combined cycle gas fired generation combined with parallel retirement of three of the existing, older, less efficient boiler units at EPS. Locating modern efficient generation at the existing EPS is the best location as there is the well established regional electrical distribution grid and associated support facilities at the site.

As the City acknowledges in its staff report and proposed ordinance, its existing zoning and associated land use regulations have consistently provided for electrical energy production at the EPS site for decades and the regional energy grid has developed around EPS to fully support it. The CECP would utilize only the easterly approximately 32 acres of the EPS site, between Interstate 5 and the railroad tracks, leaving the balance of the overall EPS site westerly of the railroad tracks for potential future development when the balance of the existing facility can also be retired.

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It is particularly disturbing that the City chose to provide neither Cabrillo nor the California Energy Commission any advance notice of the proposed ordinance as there are many legal and factual flaws in the action proposed by the City.

LEGAL IRREGULARITIES

The siting and operation of the CECP is within the exclusive jurisdiction of the CEC under the Warren-Alquist Act. The City and the City's Redevelopment Agency are active interveners in that process and all activities regarding the CECP must be submitted and evaluated through the comprehensive process established by the CEC under California law. The CEC "occupies the field" in terms of jurisdiction and the City's attempted circumvention of California law is improper as beyond its legitimate powers.

The City's efforts to proceed under the "urgency ordinance" provisions are misplaced here as the staff report and ordinance itself demonstrates this CECP application has been pending since September, 2007. The City fails to establish the requisite facts or circumstances establishing any urgency or emergency justifying this action. The CEC administrative record is complete with multiple objections from the City for the better part of two years; common sense establishes the absence of any emergency conditions.

The proposed ordinance constitutes impermissible/illegal "spot zoning" as it is clearly directed at a single pending project and a single landowner. The proposed action cannot be justified as general legislation; in essence, it represents an improper use of retro-active zoning to illegally attempt to pre-empt the CECP.

In the draft ordinance, the City "resolves" that certain factual conclusions exist regarding the "need" for the ordinance. However, no where in the administrative record is there any facts supporting those naked conclusory statements to support the City's claims, the basis for the emergency/urgency ordinance, or the unsupported claim the ordinance is needed to protect the immediate health and safety of the community.

The City has failed to comply with the California Environmental Quality Act (CEQA) by attempting to rely on an inapplicable "exemption" citing Admin. Reg. Sec. 15262 in its staff report. The proposed ordinance attempts and purports to go far beyond the permissible scope of "planning and feasibility" studies authorized by the limited CEQA exemption cited. The City has made no effort whatsoever to comply with CEQA. According to the City's own staff report, it contends important environmental effects are involved here. The CEC is undergoing a comprehensive statutory environmental evaluation of the CECP and the City has fully engaged in the environmental issues. For the City to now assert that no environmental impacts are raised

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is ludicrous and to ignore the CEQA compliance requirements applicable to City actions is illegal.

FACTUAL INACCURACIES

The entire staff report and the proposed ordinance contain many inaccurate and unsupported statements regarding the CECP, apparently in an effort to bolster the proposed ordinance and the City's long standing opposition, notwithstanding the true state of affairs. Regrettably, the continuing inaccurate and unsupported statements and project renderings only serve to confuse the public and community.

A major continuing factually unsupportable theme throughout the staff report and proposed ordinance is that the CECP will have adverse unmitigable environmental effects. Nothing could be further from the truth. The comprehensive environmental analysis undertaken by the independent CEC staff to date does not demonstrate that CECP will have any unmitigable adverse environmental effects. In fact, part and parcel of the CECP is the concurrent retirement of the less efficient three older boiler units at EPS. As a result of the CECP, electrical power generation in the basin will be cleaner, more efficient and emit less pollutants per megawatt of energy output compared with the existing EPS units.

Further, City continually suggests the CECP represents an additional new 540 MW of generating capacity. In fact, with the concurrent retirement of three EPS existing units, the net increase in generating capacity will be about 220 MW. However, because the new combined cycle gas fired air cooled units are much more efficient and lower emitting per megawatt of energy output, the overall environmental benefits will be much greater as demonstrated and documented in the CEC process.

The staff report infers that the CECP will be harmful to the fish and wildlife ecosystem as a result of a modest (approximately 4.3 million gallons a day) ocean water purification process that will utilize the existing EPS discharge. Nothing could be further from the truth. In fact, the small ocean water purification process is clearly intended as an interim supply until reclaimed water or similar provisions come available. When the CECP application was originally submitted, reclaimed water from nearby Encina Wastewater Authority was proposed as the source of industrial water for the CECP. However, the City refused to provide reclaimed; therefore, forcing the ocean water purification process as the alternative. Interestingly, the City's objection to this source is contrary to its long standing support for the Poseidon desalination project, which will use the same existing EPS ocean cooling water system discharge as will the CECP, but Poseidon's volumes will be 80 or more times larger. The City is on record of fully supporting Poseidon's reliance on the same source, so it should not now be raising

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"environmental" objections to CECP's modest ocean water purification while denying alternative reclaimed water sources.

CONCLUSION

It appears this late, illegal and factually unsupportable effort is but another manifestation by the City of its opposition to the modernization of electrical power generation in our region and the efficient use of the existing electrical distribution infrastructure and grid. This vital infrastructure has been in place and developed over multiple decades in order to provide the local and regional community reliable, safe and the cleanest electrical generation available.

The CECP, as presented and analyzed exhaustively in the pending CEC proceedings is environmentally superior to available options and has the following positive attributes and benefits:

- Allows for the concurrent retirement of three older, less efficient boiler units at the existing EPS facility;
- Provides clean, safe and rapid response local power generation capabilities necessary for increased grid penetration of renewable energy generation from locations outside the region; and
- The smaller footprint, and lower profile natural gas fueled combined cycle CECP units will be located on the easterly 32 acres of the EPS property between Interstate 5 and the railroad tracks, thus allowing for future development options on the EPS property westerly of the tracks.

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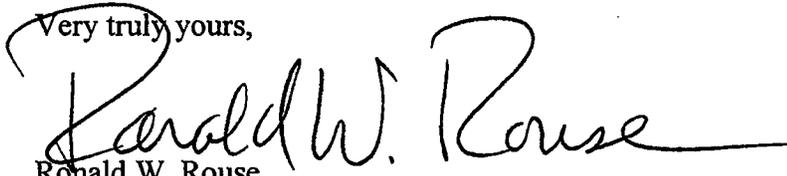
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Cabrillo objects to the unsupported and illegal proposed ordinance activities, and respectfully, asks the City to abandon that effort and instead, work through the CEC process to make sure the CECP meets all legitimate environmental and land use policies to assure the most efficient, cost effective and reliable local and regional energy sufficiency.

Very truly yours,

A handwritten signature in cursive script that reads "Ronald W. Rouse". The signature is written in black ink and is positioned above the typed name.

Ronald W. Rouse

of

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

RWR/lb

cc: Carlsbad City Clerk, City Attorney and City Manager

101195519.2

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 9/24/2009)

Carlsbad Energy Center LLC's
Correspondence to Carlsbad Mayor and Council Members

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-6
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DECLARATION OF SERVICE

I, Elizabeth Hecox, declare that on October 27, 2009, I deposited copies of the aforementioned document in the United States 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