



DOCKET
07-AFC-6
DATE <u>FEB 12 2010</u>
RECD. <u>FEB 18 2010</u>

500 Capitol Mall, Suite 1600
Sacramento, CA 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

February 12, 2010

JOHN A. MCKINSEY
Direct (916) 319-4746
jamkinsey@stoel.com

VIA EMAIL

Mr. Paul Kramer, Hearing Officer
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: Carlsbad Energy Center Project (07-AFC-6)
Applicant's Statement of Issues to be Briefed**

Dear Hearing Officer Kramer:

Pursuant to your directive issued at the Evidentiary Hearings on February 4, 2010 and further reiterated via email on February 5, 2010, please find enclosed herein Carlsbad Energy Center LLC's ("Applicant") proposed briefing topics related to Carlsbad Energy Center Project's Application for Certification process. Applicant has attempted to capture the topics identified by all parties and organized those topics in a logical sequence, moving from the broader Warren-Alquist Act jurisdictional issues to the City of Carlsbad's local ordinance-related issues. Applicant's proposed list of topics is provided in Word format so as to easily facilitate its use as needed.

Should you have any questions regarding the enclosed list of briefing topics, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "John A. McKinsey".

John A. McKinsey

JAM:kjh
Attachment
cc: See Proof of Service List

**Carlsbad Energy Center Project
07-AFC-6**

Applicant's Suggested List of Briefing Topics

I. Warren-Alquist Act/Energy Commission Jurisdictional Issues

- a. Whether the Carlsbad Housing and Redevelopment Agency has approval authority over the Carlsbad Energy Center Project ("CECP").
- b. Whether City of Carlsbad ("City") has approval authority over CECP Storm Water Pollution Prevention Plans.
- c. Whether and to what extent the Energy Commission ("Commission") must defer to the City's interpretation of City ordinances such as design standards.
- d. Whether and to what extent Section 1744 of Title 20 of the California Code of Regulations requires deference by the Commission to comments and recommendations by the City, as an interested agency.
- e. Whether and to what extent the Commission must take notice of or evaluate the adequacy of San Diego Air Pollution Control District air permitting processes associated with CECP.
- f. Whether the recently adopted City Urgency Ordinance CS-070, prohibiting the processing of permit applications for power plants, has any effect on the Commission's processing or consideration of the CECP Application for Certification ("AFC").

II. California Environmental Quality Act/ Environmental Review Issues

- a. Whether the evidentiary record demonstrates that the list of projects evaluated for possible cumulative impacts associated with CECP is adequate to represent the cumulative environment.
- b. Whether the evidentiary record demonstrates that the evaluation of the impacts of CECP greenhouse gas emissions is adequate.
- c. Whether the possible direct environmental impacts related to the shutdown or decommissioning of Encina Generating Station Units 4 and 5 , while not part of the CECP Project Description, must be evaluated.
- d. Whether the evidentiary record demonstrates that the evaluation of alternative sites for CECP is adequate.
- e. Whether the status of electricity purchasing contracts for CECP's output is necessary or relevant to the Commission's evaluation of the CECP AFC.

III. California Coastal Act Compliance

- a. Whether the Coastal Commission is required to prepare a report on CECP pursuant to Public Resource Code Section 30143(d).
- b. Whether and to what degree the Coastal Commission is required to participate in the Commission proceeding on CECP.
- c. Whether the project is "coastal dependent" within the meaning of Public Resources Code Section 30101 and what effect such status would have on the Commission's consideration of the CECP AFC.
- d. Whether the proceedings or findings by the Coastal Commission or the Energy Commission from the 1989 SDG&E Notice of Intention proceeding (NOI 89-NOI-1) have any bearing on the Commission's consideration of the CECP AFC.

Carlsbad Energy Center Project
07-AFC-6

IV. City of Carlsbad Ordinance and Plan Compliance Issues

- a. Whether the evidentiary record shows that CECP meets the South Carlsbad Coastal Redevelopment Plan requirement for “extraordinary benefit.”
- b. Whether a comprehensive update of Specific Plan 144 is required for CECP.
- c. Whether Precise Development Plan 00-02 is functionally a permit or project-specific approval or a generally applicable land use plan with which CECP must comply.
- d. Whether CECP is a “public utility” use within the meaning of Carlsbad Municipal Code Chapter 21.36.
- e. Whether the City 35-foot height limitation applies to CECP.
- f. Whether the City’s design standards, such as architectural treatment, setbacks, or landscaping, are applicable to CECP.

V. Need for Override

- a. Whether CECP requires override findings pursuant to Public Resources Code section 25525.

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 1/27/2010)

Carlsbad Energy Center LLC's
Statement of Issues to be Briefed

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

David Lloyd
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
David.Lloyd@nrgenergy.com

George L. Piantka, PE
Carlsbad Energy Center LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
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, Ste. 1600
Sacramento, CA 95814
jamckinsey@stoel.com

INTERESTED AGENCIES

California ISO
P.O. Box 639014
Folsom, CA 95763-9014
(e-mail preferred) e-recipient@caiso.com

INTERVENORS

City of Carlsbad
South Carlsbad Coastal Redevelopment Agency
Allan J. Thompson
Attorney for City
21 "C" Orinda Way #314
Orinda, CA 94563
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 preferred)
Joe.Garuba@carlsbadca.gov;
ron.ball@carlsbad.ca.gov

Terramar Association
Kerry Siekmann & Catherine Miller
5239 El Arbol
Carlsbad, CA 92008
siekmann1@att.net

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

INTERVENORS

Center for Biological Diversity
c/o William B. Rostove
EARTHJUSTICE
426 17th St., 5th Floor
Oakland, CA 94612
wrostov@earthjustice.org

Power of Vision
Julie Baker and Arnold Roe, Ph.D.
4213 Sunnyhill Drive
Carlsbad, CA 92008-3647
powerofvision@roadrunner.com

Rob Simpson
Environmental Consultant
27126 Grandview Avenue
Hayward, CA 94542
rob@redwoodrob.com

ENERGY COMMISSION

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

ANTHONY EGGERT
Commissioner and Associate Member
aeggert@energy.state.ca.us

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

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

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

Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Kimberly J. Hellwig, declare that on February 12, 2010, I deposited copies of the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, 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.

ORIGINAL SIGNED

Kimberly J. Hellwig