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December 27, 2010

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VIA EMAIL AND HAND DELIVERY

The Honorable James D. Boyd, Presiding Member
The Honorable Anthony Eggert, Associate Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
07-AFC-6	
DATE	<u>DEC 27 2010</u>
RECD.	<u>DEC 27 2010</u>

**Re: Carlsbad Energy Center Project (07-AFC-6)
Response to City of Carlsbad's Request for Local Hearing on Presiding Member's
Proposed Decision**

Dear Commissioners:

Carlsbad Energy Center Project ("CECP") submits this letter in response to the City of Carlsbad's ("City") December 1, 2010 correspondence requesting that the Committee schedule a public hearing in Carlsbad on the Presiding Member's Proposed Decision ("PMPD") in the CECP application for certification ("AFC") proceeding.¹ The nature of the City's request is unclear because Title 20, California Code of Regulations ("Siting Regulations") does not require a preliminary hearing on a PMPD. While Title 20, California Code of Regulations Section 1754 requires an adoption hearing on a PMPD ("Adoption Hearing"), there is no requirement that the Adoption Hearing be held in Carlsbad. Further, holding such any hearing in Carlsbad would not efficiently move CECP's AFC proceeding toward a Final Decision nor would such a hearing meaningfully further the public's involvement in the proceeding.

The Siting Regulations do not require the CEC to hold a preliminary hearing or any other live, oral event on the PMPD. A written comment period and the Adoption Hearing are the required components. (See Title 20, Cal. Code Regs., § 1749, 1754(a)). Furthermore, nowhere in the Siting Regulations is there a requirement for the CEC to conduct any hearing on the PMPD in the city or county in which the proposed site and related facilities are to be located. PMPD

¹ Applicant did not receive notice of the docketed correspondence until December 15 when the letter was sent out via the CEC's list-serve for CECP.



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Adoption Hearings and preliminary hearings, in cases where a preliminary hearing is scheduled, are typically held in Sacramento.² The Adoption Hearing must be held before the full Commission. A separate CEC hearing on the PMPD in Carlsbad is not a legal requirement.

Further, holding any hearing or a Committee conference on the PMPD in Carlsbad is likely to simply bring out the same oral public comments that the Committee took for two nights this year. Further, holding a Carlsbad hearing or conference could do harm to the goal of strong public involvement. This is because it could mislead a member of the public into thinking that such a proceeding was the way to comment on the PMPD or to participate in its adoption. Instead, it is only written comments that are called for under California law. The Siting Regulations provide for a thirty day comment period, which allows any person to file written comments on the PMPD. (*See* Title 20, Cal. Code Regs. § 1749.) As a brief survey of the docket in this matter demonstrates, to date, the public, interested agencies and intervenors have actively participated in the CECP proceeding through written comments filed by email and regular mail. As they have in the past, the public, interested agencies and intervenors will be able to avail themselves of the opportunity to provide written comments on the PMPD. As has been the practice in all AFC proceedings, written comments will be considered the same as comments made verbally at a public hearing. Further, the CEC typically allows the public to participate in hearings by telephone and/or by computer via the CEC's "WebEx" web conferencing system. The ability to file written comments and participation through teleconference more than adequately assures excellent and meaningful opportunity for the public to participate in the PMPD and Final Decision process. Hence, a hearing or conference on the PMPD in Carlsbad is unnecessary and risks confusing or misleading the public regarding the process.

For all of these reasons, if the Committee is inclined to schedule a hearing or conference on the PMPD, Applicant respectfully encourages the Committee to conduct any such event in Sacramento. Scheduling such an event in Carlsbad will create unnecessary inefficiencies and

² Applicant notes that Committees for Palen Solar Power Project (09-AFC-7), Almond 2 Power Plant Project (09-AFC-2), and Rice Solar Energy Project (09-AFC-10) held a "Committee Conference" for the respective PMPDs in Sacramento just prior to the CEC's adoption hearing of each.



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delays for the proceeding and all involved parties and would also represent an unnecessary and non-beneficial cost borne by the State at a time of extreme budget shortfalls.

Very truly yours,

A handwritten signature in blue ink that reads "John A. McKinsey". The signature is written in a cursive style with a large initial 'J'.

John A. McKinsey

JAM:kjh

cc: *See Enclosed Proof of Service*

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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APPLICATION FOR CERTIFICATION
FOR THE CARLSBAD ENERGY
CENTER PROJECT

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 11/3/2010)

Carlsbad Energy Center LLC's
Applicant's Response to City of Carlsbad's Request for Local Hearing
on Presiding Member's Proposed Decision

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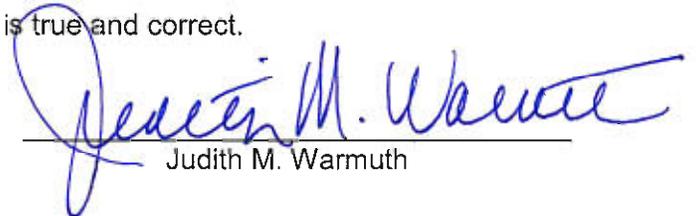
DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on December 27, 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.



Judith M. Warmuth