



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

June 28, 2011

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

**VIA EMAIL**

The Honorable James D. Boyd  
Hearing Officer Paul Kramer  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

<b>DOCKET</b>	
<b>07-AFC-6</b>	
DATE	<u>June 28 2011</u>
RECD.	<u>June 28 2011</u>

**Re: Applicant's Supplemental Comments to the Errata to the Presiding Member's Proposed Decision (07-AFC-6)**

Dear Commissioner and Hearing Officer Kramer:

At the June 15, 2011 Business Meeting, the Presiding Member's Proposed Decision ("PMPD") and its Errata for Carlsbad Energy Center LLC's ("Applicant") Application for Certification ("AFC") for the Carlsbad Energy Center Project ("CECP") was presented to the California Energy Commission for consideration. During the Meeting, the Commission continued the final decision on CECP to June 30, 2011, allowing the parties additional time to prepare comments on the PMPD Errata.

On June 27, 2011, Applicant submitted a very brief letter stating its support of the Errata to the PMPD for the CECP. After further consideration, Applicant wishes to supplement its July 27, 2011 comments. First, Applicant would like to reiterate its support of the PMPD and Errata. Applicant is satisfied that the PMPD, together with the Errata, provides the Commission with a solid environmental analysis and all conditions of certification necessary to ensure CECP is built and operated in compliance with all laws, ordinances, regulations, and standards.

Second, Applicant concurs with proposed conditions of certification Worker Safety-10, Worker Safety-11, and Haz-10. Applicant has identified an inconsistency in the text of the proposed revisions to condition of certification Worker Safety-6 and the verification for Worker Safety-6, and proposes the following changes noted in strikethrough below to rectify the inconsistency.

**WORKER SAFETY-6** The project owner shall ensure that the below-grade site fire lanes, access points, and ramps (with no more than a 10 percent grade) are constructed as per the dimensions shown in Worker Safety Figure 1 and that at least two access points through the site perimeter and into the below-grade power



The Honorable James D. Boyd  
June 28, 2011  
Page 2

plant site are available to the CFD and other emergency response providers. The access roads, below-grade perimeter road, and ramps shall be no less than 28 feet wide. **The project owner shall guarantee that the two fire access ramps down into the project site and the fire lane around the perimeter of the below-grade site are free and clear of all vehicles, equipment, or any other object (mobile or stationary) at all times and that the boundaries or curbs of the ramps and lanes are painted red and contain signage to indicate that they are fire roads and lanes.** The final blueprints for the site shall be submitted at least 30 days prior to the start of site mobilization to the Carlsbad Fire Department for review and comment and to the CPM for review and approval. A copy of the transmittal letter to the Carlsbad Fire Department shall also be sent to the CPM. Any requested changes in the fire lanes, ramps, and access points shall be made in writing to the CPM and the CBO for review and approval after obtaining comments from the CFD.

**Verification:** At least 360 days prior to the start of site mobilization, the project owner shall submit a copy of the final site blueprints to the Carlsbad Fire Department for review and comments and to the CPM for review and approval. The project owner shall also submit to the CPM a copy of the transmittal letter to the CFD.

**At least 60 days prior to the start of commissioning or the arrival on-site of any liquid fuel, natural gas, or hazardous material, whichever occurs first, the project owner shall submit to the CBO for information, to the Carlsbad Fire Department for review and comment, and to the CPM for review and approval a signed declaration along with photographic evidence that the access ramps and fire lanes are guaranteed to always be clear and unobstructed and that signs and red paint have been placed in the appropriate locations.**

In addition, Applicant has identified an errant quotation in the Errata and believes that the quotation marks need to be removed. On Errata page 22 (Soil and Water Resources), Applicant requests that the quotation marks be removed from the paragraph beginning “Even if one assumes...”

Lastly, late yesterday afternoon Applicant received the City of Carlsbad and the Carlsbad Redevelopment Agency’s (collectively, the “City”) “Comments” on the PMPD as well as the



The Honorable James D. Boyd  
June 28, 2011  
Page 3

Center for Biological Diversity's ("CBD") Motion for Clarification, Motion to Set an Appropriate Date for the Final Decision, and Motion for Reconsideration (collectively, "Motions"). Applicant objects to pages 1-14 of the City's "comments" as they are legal argument that falls outside the scope of Chairman Weisenmiller's June 17, 2011 Notice of Continued Full Commission Hearing ("Notice"). Specifically, the Notice identifies that the purpose of the Continued Hearing "is to consider whether the Energy Commission should adopt, modify, or reject the PMPD and Errata." The Notice then states the following:

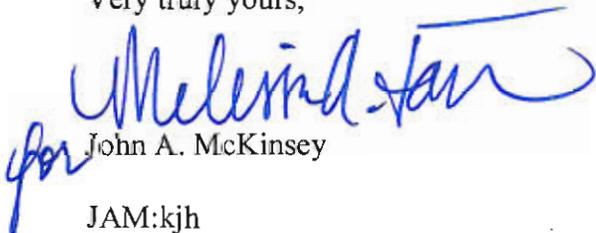
Parties and members of the public may participate in person or remotely as described below and offer oral and written comments on issues contained in or raised by the Errata. Comments on the PMPD were accepted on June 15, recorded in the official record and need not be repeated.

(Notice at p. 1 (emphasis added).)

Pages 1-14 of the City's "Comments" are clearly outside the scope of the comments allowed by the Notice. In fact, the information that the City reargues in pages 1-14 of its "Comments" has been fully briefed numerous times throughout the CECP AFC proceeding, was discussed at length during the February 1-4, 2010 and May 19-20 evidentiary hearings, and was vetted during the June 15 CEC Business Meeting. Therefore, Applicant respectfully requests that pages 1-14 of the City's June 27, 2011 "Comments" be disregarded by the Committee and the Commission as a whole.

As to CBD's Motions, however, Applicant reserves its right to oppose and/or object to CBD's Motions during the Continued Full Commission Hearing scheduled for June 30, 2011. Applicant looks forward to the June 30, 2011 Continued Hearing at which the Commission is well-equipped to provide a final approval for the CECP AFC.

Very truly yours,

  
John A. McKinsey

JAM:kjh

cc: Proof of Service List

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](http://WWW.ENERGY.CA.GOV)

APPLICATION FOR CERTIFICATION  
FOR THE CARLSBAD ENERGY  
CENTER PROJECT

Docket No. 07-AFC-6  
PROOF OF SERVICE  
(Revised 5/18/2011)

Carlsbad Energy Center LLC  
Applicant's Supplemental Comments to the Errata to the Presiding Member's  
Proposed Decision for Carlsbad Energy Center Project  
(June 28, 2011)

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 07-AFC-6  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[doCKET@energy.state.ca.us](mailto:doCKET@energy.state.ca.us)

**APPLICANT**

Jennifer Hein  
George Piantka, P.E.  
NRG Energy, West  
5790 Fleet Street, Suite 200  
Carlsbad, CA 92008  
[jennifer.hein@nrgenergy.com](mailto:jennifer.hein@nrgenergy.com)  
[george.piantka@nrgenergy.com](mailto: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](mailto:Robert.Mason@ch2m.com)

Megan Sebra  
CH2M Hill, Inc.  
2485 Natomas Park Drive, Ste. 600  
Sacramento, CA 95833  
[Megan.Sebra@ch2m.com](mailto:Megan.Sebra@ch2m.com)

**COUNSEL FOR APPLICANT**

John A. McKinsey  
Stoel Rives LLP  
500 Capitol Mall, Ste. 1600  
Sacramento, CA 95814  
[jamckinsey@stoel.com](mailto:jamckinsey@stoel.com)

**INTERESTED AGENCIES**

California ISO  
(e-mail preferred) [e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENORS**

Terramar Association  
Kerry Siekmann & Catherine Miller  
5239 El Arbol  
Carlsbad, CA 92008  
[siekmann1@att.net](mailto:siekmann1@att.net)

City of Carlsbad  
South Carlsbad Coastal Redevelopment Agency  
Allan J. Thompson  
Attorney for City  
21 "C" Orinda Way #314  
Orinda, CA 94563  
[allianori@comcast.net](mailto:allianori@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](mailto:Joe.Garuba@carlsbadca.gov);  
[ron.ball@carlsbad.ca.gov](mailto:ron.ball@carlsbad.ca.gov)

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](mailto:gsmith@adamsbroadwell.com)  
[mdjoseph@adamsbroadwell.com](mailto:mdjoseph@adamsbroadwell.com)

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

Power of Vision  
Julie Baker and Arnold Roe, Ph.D.  
4213 Sunnyhill Drive  
Carlsbad, CA 92013  
[powerofvision@roadrunner.com](mailto:powerofvision@roadrunner.com)

Rob Simpson  
Environmental Consultant  
27126 Grandview Avenue  
Hayward, CA 94542  
[rob@redwoodrob.com](mailto:rob@redwoodrob.com)

**ENERGY COMMISSION**  
JAMES D. BOYD  
Vice Chair and Presiding Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

Tim Olson  
Adviser to Vice Chair Boyd  
[tolson@energy.state.ca.us](mailto:tolson@energy.state.ca.us)

Paul Kramer  
Hearing Office  
[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)

Mike Monasmith  
Siting Project Manager  
[mmonasmi@energy.state.ca.us](mailto:mmonasmi@energy.state.ca.us)

Dick Ratliff  
Staff Counsel  
[dratliff@energy.state.ca.us](mailto:dratliff@energy.state.ca.us)

Jennifer Jennings  
Public Adviser's Office  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

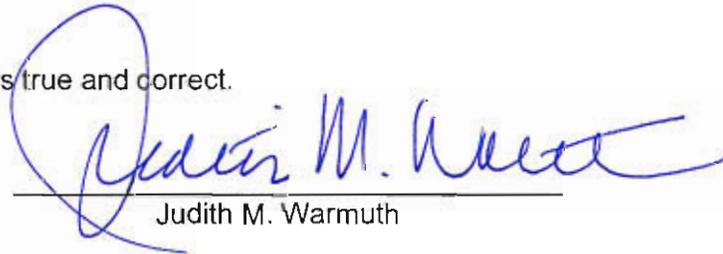
### **DECLARATION OF SERVICE**

I, Judith M. Warmuth, declare that on June 28, 2011, 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.

### **AND/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