STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In the Matter of: **The Application for Certification for the CARLSBAD ENERGY CENTER PROJECT**	**Docket No. 07-AFC-6**

CARLSBAD ENERGY CENTER LLC'S WRITTEN COMMENTS ON REMOVAL OF CONDITIONS OF CERTIFICATION LAND-2 AND LAND-3 AND SCHEDULE FOR TESTIMONY AND EVIDENTIARY HEARING

September 23, 2011

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I. INTRODUCTION

During the September 13, 2011 Committee Conference and discussion of the schedule going forward as such relates to Carlsbad Energy Center LLC's ("Applicant") application for certification ("AFC") for the Carlsbad Energy Center Project (the "Project" or "CECP"), Applicant requested removal of two proposed conditions of certification, LAND-2 and LAND-3 (collectively, the "Land Use Enhancement Conditions"). Applicant explained that, after serious consideration, it had determined that the Land Use Enhancement Conditions would present significant burdens to the Project and were not acceptable modifications to the Project.

Originally, Applicant and the City of Carlsbad and City of Carlsbad Redevelopment Agency (collectively, the "City"), agreed to and presented the Land Use Enhancement Conditions for the Committee's consideration. Applicant, in good faith, made every effort to assuage the City's concerns regarding the demolition and removal of the existing Encina Power Station. In fact, the Applicant agreed to language that requires involvement by the City in key decisions regarding demolition and removal of the Encina Power Station. However, the City continues to dynamically fight and oppose CECP in numerous forums and proceedings including

the CECP AFC process. Specifically, the City persists in its efforts to develop and pass local ordinances that attempt to deter Applicant from proceeding with development of the Project and that would circumvent the Warren-Alquist Act. For example, the City Planning Commission and/or City Council has passed or is in the process of passing the following ordinances: (1) Urgency Ordinance CS-067 to block future fossil generation in the coastal zone (Oct. 2009); (2) Ordinance CS-070, one-year extension to Urgency Ordinance CS-067 and subsequent extension (Dec. 2009); (3) Changes to Power Plan Standards, Resolution 6803 - 6807: Proposed Amendments to Carlsbad General Plan Amendment (GPA 11-06), Zone Code Amendment (ZCA 11-05), Local Coastal Plan Amendment (LCPA 11-06), Encina Power Station Precise Development Plan (PDP 00-02(E)), and Encina Specific Plan (SP 144(N) (Sept. 2011); and (4) Housing and Redevelopment Commission Resolution 513, which notes that two power plants are in conflict with the South Carlsbad Coastal Redevelopment Plan (Sept. 2011).

Primarily because of the City's continuous acts, but also because of the accumulation of burdens upon the Project, Applicant has determined the Project would be at significant risk for financial non-viability should the Land Use Enhancement Conditions be included in the final decision for the Project. For the reasons set forth below, Applicant strongly and respectfully urges the Committee to eliminate LAND-2 and LAND-3 in a forthcoming revised Presiding Member's Proposed Decision ("PMPD").

II. REMOVAL OF CONDITIONS OF CERTIFICATION LAND-2 AND LAND-3

A. Elimination of the Land Use Enhancement Conditions does not injure or weaken the Project's environmental analysis or LORS compliance

The Land Use Enhancement Conditions were interjected into the CECP proceeding at the last minute solely to provide a further project enhancement, one that went directly toward a repeated City claim of wanting more certainty regarding the eventual elimination of power generation at the existing frontal coastal area of the Encina Power Station parcel. The vast bulk of the evidentiary record and the PMPD, as originally proposed by the Committee, resolved all land use issues without the need for such additional enhancements. The PMPD also saw through the

City's endless stream of repeating, inaccurate, distorted and varying claims of how the Project was not in compliance with City ordinances and would cause significant harm to the environment. The PMPD recognizes the superior environmental benefits provided by the Project, including the simple fact that it replaces three aging, less-efficient boilers located in a large building on the beach with modern, efficient, renewable energy-supporting combined cycle units located behind the railroad tracks and nestled in a tank farm area recessed between the railroad tracks and Interstate-5 ("I-5"). Further, the PMPD recognizes the fact that the Project does exactly what is called for in the City ordinances; specifically, CECP provides a modern, smaller generation project removed from the coastline.[1]

The Land Use Enhancement Conditions were solely enhancements and the City has resoundingly rejected them. In fact, if anything, the Land Use Enhancement Conditions simply provided the City with an entirely new slew of reasons to claim that the Committee was violating the law by improperly recommending approval of the Project. Now, of course, the City will renew its already made and rejected arguments that the Land Use Enhancement Conditions were necessary to meet various requirements of the City's ordinances. The evidentiary record, however, is replete with testimony and analysis by Applicant and CEC Staff demonstrating that the City's arguments are ones of convenience and not of merit. The simple fact is that the Project is another part of the City's approved plans to renew the Encina Power Station, a plan that also includes a desalinization project, which the City gladly and readily approved without raising any of these same arguments. These facts belie the truth: the City government is opposed to CECP for non-legal, political reasons and seeks to use any argument it can to try and deter the Project from completion. Sadly, as noted below, if successful the City's efforts most likely would work directly against the interests of the residents of the City of Carlsbad and the City government's own stated objectives.

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[1] CEC Staff concurs. Staff's Supplemental Testimony filed on August 12, 2011 notes that "the CECP provides "Extraordinary Public Benefits" to the local and regional communities irrespective of EPS's demolition as may occur under LAND-2 and LAND-3." (Staff's Supplemental Testimony at p. 11; *see generally* Staff's Supplemental Testimony at pgs. 11-12.)

The fact is that CECP, without the Land Use Enhancement Conditions, conforms to all laws, ordinances, regulations and standards ("LORS") and would not have a significant adverse impact on the environment.

B. The Land Use Enhancement Conditions modify the Project by expanding its scope beyond that which Applicant is willing to construct as part of the Project and would impose an unbearable and improper burden upon the Project

The Land Use Enhancement Conditions would impose upon an unbearable burden on the Project and would saddle the smaller, modern Project to be constructed between the railroad tracks and I-5 with the financial obligation of demolition and remediation of the existing generator building at the Encina Power Station. This burden is tens of millions of dollars, perhaps even more than $100 Million. If such work were part of a redevelopment plan, complete with planned revenue production, then such an obligation might be palatable. But, in the setting where a hostile City has been resisting all efforts to cooperatively plan for the future, and where that same City has done nothing but continue to fight the Applicant by all means possible, this burden would end up being borne by the Applicant and ultimately would have to be built into the cost of the electricity generated by CECP. Essentially, this would render the Project financially unviable.

Further, and as argued by the City, the Land Use Enhancement Conditions represent a modification to the Project that was added at the last minute by the Committee, acting in good faith that the City would gladly accept these conditions and not object to their last minute character. Without a willing Applicant to agree to this enhancement and Project change, the Committee has no choice but to reject the Land Use Enhancement Conditions. Further, removing the unduly burdensome conditions actually resolves some City arguments against the Project.

C. Removal of the Land Use Enhancement Conditions creates the best chance to achieve that which the Carlsbad City government and community want: repowering that leads to coastal renewal

Sadly, the City's actions - opposing a project that would not only guarantee the shutdown of three of the five units at Encina Power Station, but which will also establish independent generation on the easternmost portion of the property between I-5 and the railroad tracks, adjacent

to the City's sewer lift station expansion and near San Diego Gas & Electric's switchyard - will result in preservation of the existing Encina Power Station for the foreseeable future. CECP's new, efficient generation would not only support increased reliance upon the increasing amounts of intermittent renewable energy being built under California's 33 percent Renewables Portfolio Standard, but also would address the need for generation in the load area identified by the California Independent System Operator . To that end, by opposing CECP, the City seeks to further lengthen the lifetime of all five existing units and the generator building at the Encina Power Station. In fact, the City's actions are best described as seeking to create an environment where the existing generating building and its generating units have no foreseeable end date. The City's actions also run counter to the State's enacted plan to eliminate entrainment effects from once-through cooling systems in the State. In effect, the City's actions are short-sighted and neither in furtherance of environmental protection nor in the interests of its residents. By removing the Land Use Enhancement Conditions, the Committee will be seeking the best chance at coastal renewal, lessened environmental impacts, and a reliable, sustainable supply of electricity.

III. PROPOSED SCHEDULE

Assuming the Committee agrees with elimination of the Land Use Enhancement Conditions, Applicant urges the Committee to proceed with the necessary hearings, if any, to complete a revised PMPD that includes any special findings the Committee believes are appropriate to buttress the existing recommended approval of CECP. Applicant requests that if the Committee allows additional testimony, that it be limited to only those items included in the Staff Analysis that relate to project alternatives and GHG. Applicant also respectfully requests that any additional evidentiary hearings be limited to one day.

IV. CONCLUSION

Applicant respectfully requests that the Committee remove the Land Use Enhancement Conditions, LAND-2 and LAND-3, and proceed to a revised PMPD and recommended approval of the Project.

Date: September 23, 2011

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APPLICATION FOR CERTIFICATION FOR THE CARLSBAD ENERGY CENTER PROJECT	Docket No. 07-AFC-6 PROOF OF SERVICE (Revised 9/19/2011)

CARLSBAD ENERGY CENTER LLC'S
Written Comments on
Removal of Conditions of Certification Land-2 and Land-3 and Schedule for Testimony and Evidentiary Hearing dated September 23, 2011

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DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on September 23, 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

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