

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 OPPOSITION TO
THE CITY OF CARLSBAD AND CARLSBAD REDEVELOPMENT AGENCY'S
MOTION TO ENLARGE TIME TO FILE REBUTTAL TESTIMONY**

November 29, 2011

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I. INTRODUCTION

On or about November 15, 2011, the City of Carlsbad and the Carlsbad Redevelopment Agency (collectively the "City") filed a Motion to Enlarge Time to File Rebuttal Testimony (and to Unconditionally Grant the Motion of Official Notice) (the "Motion"). Applicant Carlsbad Energy Center LLC ("Applicant") herein opposes the City's Motion. Specifically, Applicant opposes the City's request to enlarge the time for intervenors to file rebuttal testimony as such relates to the December 12, 2011 evidentiary hearing in the Carlsbad Energy Center Project ("CECP") application for certification ("AFC") proceeding. The City's claim that the Committee's November 9, 2011 Scheduling Order (the "November 9th Order") "makes sense for Applicant and Commission staff" and "does not make sense for intervenors" is without merit. As such, Applicant requests that the Committee deny the City's Motion.¹

¹ Applicant believes a response to City's Motion is appropriate here. However, it is important to highlight the fact that intervenors to a proceeding are not required to submit testimony in an AFC proceeding. The burden of proof lies solely with the Applicant to prove sufficient evidence to support the findings and conclusions required for the certification of CECP. (See generally 20 Cal. Code Regs. § 1748.)

II. ARGUMENT

Prior to the November 9th Order, the Committee issued a scheduling order dated August 11, 2011 (the “August 11th Order”). The August 11th Order required the parties to submit testimony on topics that included: 1) greenhouse gas issues as such relate to a potential requirement for CECP to maintain a Federal PSD Permit; 2) evaluation of the cumulative and alternatives analysis related to San Diego Gas and Electric’s Power Purchase Agreements with three new power plant projects in the San Diego region; 3) issues associated with conditions of certification LAND-2 and LAND-3 and their environmental impacts; and 4) grid reliability issues raised by comments from the California Independent System Operator during the June 30, 2011 Energy Commission Business Meeting. The Committee’s November 9th Order also requires the parties to provide testimony on precisely these topics.²

At the time the August 11th Scheduling Order was issued, the City expressed no indication that the time frame for which the parties were required to submit testimony was problematic. The November 9th Order provides the City, and all other intervenors, a greater time frame for submitting responsive testimony than did the August 11, 2011 Scheduling Order. Nevertheless, the City believes it will not be afforded enough time to “review responses provided by Applicant and Commission staff...without the benefit of any time provided for review.” (City’s Motion at p. 1.) This claim is simply nonsense.

The November 9th Order requires the parties to provide testimony on five topics; four of which all parties have known about for months. Specifically, the November 9th Order requires the parties to submit testimony in preparation for the December 12, 2011 evidentiary hearing as follows:

- Staff files supplemental testimony and exhibits on November 18, 2011;

² On June 30, 2011, the parties were apprised of the topics that would be opened for additional testimony and evidentiary hearing. The November 9th Order, which revised the August 11th Order, offered no surprise as to the issues to the parties were to submit testimony – the issues had been known for over four months.

- Applicant files responsive testimony and exhibits, witness lists, and time estimates [for examination of witnesses] on November 18, 2011;
- Other parties file responsive testimony and exhibits, witness lists and time estimates [for examination of witnesses] on December 1, 2011; and,
- All parties file rebuttal testimony, identify materials referenced in or attached to other parties' opening testimony they want copies of, and, if necessary, revise witness lists and time estimates [for examination of witnesses] on December 7, 2011.

As set forth above, the City, as well as all other intervenors, have twenty-two days to prepare, and submit testimony responsive to the November 9th Order.³ Thereafter, all parties are afforded an opportunity to file any rebuttal testimony on December 7, 2011. This provides the City (and all other intervenors) an additional six days to rebut any testimony filed by Applicant in its November 18th filing and by Staff in its August 12th and November 18th filings.⁴ In contrast, however, Staff and Applicant must review and prepare rebuttal testimony to six intervenors' testimony within the same six days that the intervenors must review and prepare rebuttal testimony to Applicant's and Staff's initial testimony. It is the Applicant and Staff who are not afforded the benefit of surplus time to submit rebuttal testimony – not the City. However, Applicant is confident that no additional time is necessary for it to review the testimony of all other parties and prepare and submit its rebuttal testimony by the December 7th deadline. The City's claim that intervenors are not afforded enough time to "review responses

³ Even if the November 9th Order is interpreted to require the City and all other intervenors to file testimony responsive to what Staff and Applicant have already submitted (which does not seem to be the intent of the November 9th Order), the City and all other intervenors still have thirteen days to review, prepare, and submit responsive testimony as Staff filed its testimony on August 12, 2011 and November 18, 2011, and Applicant filed its testimony on November 18, 2011. Further, the Committee should consider that the City received an influx of \$250,000.00 on November 8, 2011 specifically to continue its fight against CECP. This increased budget surely could accommodate the resources needed to review, prepare, and submit testimony within the time frame specified in the November 9th Order.

⁴ It is important to note that Staff's August 12th testimony consisted of nearly thirty pages of testimony and included only one exhibit. In addition, Staff's November 18th testimony is only six and one-half pages and provides no exhibits. Finally, Applicant's November 18th testimony is barely twenty-four pages and includes only four true exhibits (the remaining "exhibits" are simply declarations and professional qualifications). The time for reviewing these submittals and preparing responsive testimony should be very minimal for all the parties, especially since the parties have had over three months to review and prepare responses to Staff's August 12th testimony.

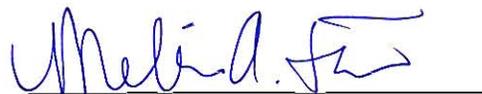
provided by Applicant and Commission staff...without the benefit of any time provided for review” is simply nonsense and the Committee should deny the City’s Motion.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully requests the Committee to **deny** the City’s motion and order the parties to proceed pursuant to the November 9th Order and prepare for the scheduled December 12, 2011 evidentiary hearing on the topics identified herein.

Date: November 29, 2011

Stoel Rives LLP



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APPLICATION FOR CERTIFICATION
FOR THE CARLSBAD ENERGY
CENTER PROJECT

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 10/24/2011)

**CARLSBAD ENERGY CENTER LLC'S
Opposition to City of Carlsbad and Carlsbad Redevelopment Agency's Motion to
Enlarge Time to File Rebuttal Testimony dated November 29, 2011**

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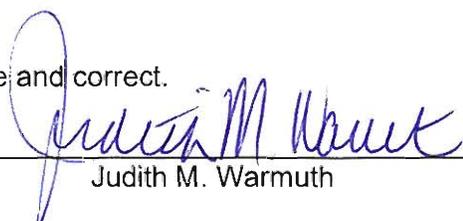
DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on November 29, 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