

STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

<b>DOCKET</b>	
<b>07-AFC-6</b>	
DATE	APR 16 2009
RECD.	APR 16 2009

Application for Certification for the )  
Carlsbad Energy Center Project ) Docket No. 07-AFC-6  
\_\_\_\_\_)

City of Carlsbad  
Petition to Compel Response to Data Requests

On March 23, 2009 the City of Carlsbad, an intervener in the above-referenced proceeding, submitted ten data requests (numbers 142 – 151) requesting responses from the Carlsbad Energy Center Project (“CECP”). On April 9, 2009 the CECP informed the City that “Applicant has no further intent to respond to the City’s data requests at this time.”

City Request

Although the City continues to believe that all the information requested in these ten requests is necessary to complete a comprehensive analysis of the issues in this proceeding and required for a decision, the City will forego nine of its requests at this time. The City will attempt to obtain the information sought in nine of these requests through other pathways.

This Petition requests the Assigned Committee order the CECP to respond to its data request number 148,

“Provide or prepare, if necessary, visual simulations of the CECP, including the proposed switchyard adjacent to the West Hotel, which incorporates the widening of I-5, the double tracking of the LOSSAN rail corridor, the Coastal Rail Trail and the Carlsbad/Vista Sewer Interceptor. Include safety features, such as barrier walls, related to I-5 and the Coastal Rail Trail.”

The projects that the City wants to have included in the simulation are reasonably foreseeable projects necessary for a complete cumulative analysis of the CECP project. The City fears that an incomplete cumulative analysis will fail to identify the significant adverse cumulative impacts resulting from construction and operation. The City is requesting the Assigned Committee to order CECP to produce the simulation and to include the listed cumulative projects in that simulation.

## CECP Objection

The CECP objects to providing the requested information and offers three separate reasons for not responding to the data request: (1) the requests are untimely, (2) the information sought exceeds the scope of this proceeding and (3) it would require the CECP to hypothesize about projects outside the scope of CECP and their potential effect on CECP.”

## City Response

The City believes the objections of the CECP are totally without merit. The City believes CECP is more than willing to produce another site simulation, but strongly objects to the development of a complete cumulative analysis.

As discussed below, the City is again requesting the information because CECP has failed to answer previous data requests. Also, no one could argue that the scope of the CEC inquiry includes cumulative impacts from reasonably foreseeable projects that, cumulatively, result in significant adverse environmental impacts.

### (1) Untimely.

- a. The City would have some degree of sympathy for the CECP but for two very important facts. One, a very similar request was made of CECP on September 11, 2008. This data request was based in part on CECP’s June 2008 major revision titled “Project Enhancement and Refinement”. The CEC Staff included these requests in a letter to CECP dated September 19, 2008. In the cover letter Staff stated: “we understand that you will ultimately provide data responses to all the questions asked.”

CECP has to date refused to respond to many of these data requests, including Data Request 62, which reads: “Provide a comprehensive site plan which includes CSDP, the sewer interceptor, the I-5 widening, and the CECP.”

Although data request 62 does not mention the LOSSAN rail track widening or the Coastal Rail Trail, the intent was, and is, to have a comprehensive depiction of the project on the selected site showing all probable future projects. CECP failed to object to the September requests and has never provided responses.

- b. Second, the 180 day limit on data requests is subject to a Commission determination of good cause. The City believes that a desire to evaluate the project as proposed, along with reasonably foreseeable future projects, constitutes good cause.

### (2) The scope of the proceeding. The scope of the CEC AFC proceeding includes an analysis of cumulative impacts. (14 CCR 15130 (a)) The CEC Staff in the Ivanpah Solar Electric Generating System proceeding (07-AFC-05) published a thorough cumulative impact analysis. In the Ivanpah analysis Staff created a list of “probable future projects”

that includes projects where the environmental report is in progress (high speed train and airport expansion) and one where there will be a future filing (115-kV transmission line). The Ivanpah example should be viewed as a guide for future cumulative analyses. In this proceeding, Staff recognizes that the Vista/Carlsbad Interceptor Sewer Project, the Coastal Rail Trail and the new switchyard are probable future projects as they are discussed in the Preliminary Staff Assessment. A description of the LOSSAN rail double track was filed on May 9, 2009. The only remaining item, and the one that CECP has argued is too speculative to include, is the I-5 widening project.

- (3) Hypothesize about projects outside the scope. In a Status Report filed January 30, 2009 CECP describes the Highway I-5 widening project “while the widening of Interstate 5 is a foreseeable event, its potential impact on CECP, if any at all, is purely speculative.” (Status Report 4, page 4).

The Caltrans project is not speculative. Caltrans filed a letter, dated February 5, 2009, with this Commission (attached) where it describes the I-5 widening project. The project started in the 1990s, its public input process began in 2004, it is being funded, in part, by a 2005 county-wide voter-approved local sales tax. The City believes this project is not speculative at all and CEQA demands that it be considered in the Commission’s cumulative analysis. Staff opined that there may be significant adverse impacts in a proper cumulative analysis.

“A potential significant cumulative visual impact may be created as a result of the combination of the proposed Carlsbad Energy Center project and the North Coast Corridor Interstate HOV/Managed Lanes project being proposed by California Department of Transportation, which affects Interstate 5 bordering the Carlsbad Energy Center Project.”

Staff PSA p. 4.12-1

Caltrans agrees with Staff. Caltrans, in its February 5 letter, concludes that all four alignments being considered “require the removal of the existing earth berm, associated landscape and acquisition of plant property”. Without the berm and the screening that it provides, there is likely to be the “significant visual impact” that concerns Staff. The Assigned Committee needs to force CECP to respond to the City’s data request 148 so that the cumulative analysis can be created that includes the impacts from all reasonably foreseeable projects.

## Conclusion

The information that would be contained in a complete response to data request 148 would aid the Staff, other parties and the public in their evaluation of CECP impacts. The City is fearful that the CECP, along with the Highway I-5 widening and other projects affecting the CECP site, may cause unmitigatable, adverse environmental impacts that would fall directly on the citizens of Carlsbad.

City Request

- (1) Direct CECP to respond to Data Request 148 in a timely manner
- (2) Clarify that the projects to be included on the visual simulation are all reasonably foreseeable projects, which should be considered in the Staff cumulative analysis. These projects are the I-5 widening, the coastal rail trail, LOSSAN rail track widening and the sewer interceptor project.

The City is prepared to participate in oral argument on this issue if the Assigned Committee determines that a hearing is necessary.

Dated: April 16, 2009

/S/ Allan J Thompson

Allan J Thompson  
21 "C" Orinda Way, #314  
Orinda, CA 94563  
(925) 258-9962  
[allanori@comcast.net](mailto:allanori@comcast.net)

Ronald Ball  
City Attorney

City of Carlsbad

**DEPARTMENT OF TRANSPORTATION**

4050 TAYLOR STREET  
SAN DIEGO, CA 92110  
PHONE (619) 701-0472  
FAX (619) 688-2587



*Flex your power!  
Be energy efficient!*

February 5, 2009

COPY

Mr. Mike Monasmith  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5112

Dear Mr. Monasmith:

The California Department of Transportation (Caltrans) has reviewed the Preliminary Staff Assessment (PSA) for the proposed Carlsbad Energy Center Project (CECP) located adjacent to Interstate 5 (I-5) in the City of Carlsbad. We appreciate the time that the California Energy Commission has extended to Caltrans for our review. From a Caltrans perspective we believe that although there are many constraints in this corridor, the needs of both facilities can be accommodated by working in partnership. In addition to our comments below, please refer to our previous letter dated November 17, 2008.

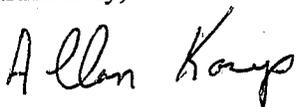
1. The formal environmental process for the I-5 North Coast Corridor (I-5 NCC) project was initiated in 2004 in partnership with the Federal Highway Administration (FHWA) and funded by the San Diego Association of Governments (SANDAG). The I-5 NCC has been a key component of the Regional Transportation Plan since the mid 1990s and is also included in the Region's Transnet program, a local ½ cent sales tax for transportation projects, approved by voters in 2005.
2. Interstate 5 is an Interstate facility that serves not only local and regional traffic, but interregional, goods movement, and national defense related traffic. As such, various regional, state and national stakeholders have identified the widening of the I-5 NCC as a high priority. The I-5 NCC project is a high priority project under Presidential Executive Order (E.O.) 13274 "Environmental Stewardship and Transportation Infrastructure Project Reviews" to "enhance environmental stewardship and streamline the environmental review and development of transportation infrastructure projects." It is the only project in California on the list of eight nationwide projects selected by the U.S. Department of Transportation (USDOT). Additionally I-5 is one of only three corridors in California that are designated as a national "Corridor of the Future" by the USDOT.
3. Given the nature and location of natural resources and adjacent existing and planned land uses in this corridor, our flexibility to construct the I-5 NCC is very limited. As such, it is critical that the proposed CECP does not preclude, interfere with, or unduly restrict existing or the planned future expansion of I-5 and the double-tracking of the Los Angeles to San Diego (LOSSAN) Rail Corridor. To ensure this we would request that the applicant demonstrate how these facilities are accommodated in the future condition such that they are compatible public uses in terms of design, use, impacts, cost and constructability using reasonable construction methods.

Mr. Mike Monasmith  
February 5, 2009  
Page 2

4. It should be noted that concerns raised regarding the potential for errant vehicles impacting the plant are typically addressed through placement of a barrier at the edge of the I-5 traveled way.
5. All four alternatives being formally studied in the I-5 NCC draft environmental document require the removal of the existing earth berm, associated landscape and acquisition of plant property. Caltrans agrees with the concern stated in the document regarding the potential for significant adverse cumulative visual impacts, if the two projects go forward without coordination on this issue. Furthermore, the adjacent land uses and natural resources significantly limit our ability to fully mitigate visual impacts associated with the highway expansion in this area. Consequently, we would recommend a visual analysis be completed assuming both projects are constructed. Caltrans would be an advocate to work in partnership with the applicant to explore possibilities as part of the energy plant project to address cumulative visual impacts of the two projects.
6. We would continue to advocate that the ultimate location of the Coastal Rail Trail be identified to the mutual satisfaction of all the parties. If our understanding that other alternatives have been identified and it will no longer be adjacent to I-5.
7. As the CECG is adjacent to the LOSSAN corridor, we would recommend that the project be coordinated with SANDAG, the agency responsible for planning and developing the LOSSAN double-tracking project

Caltrans appreciates the opportunity to comment on this project. If you have any questions, please contact Arturo Jacobo at (619) 688-6816.

Sincerely,



Allan Kosup,  
I-5 Corridor Director

c: Joe Garuba, City of Carlsbad,  
Rob Rundle, Sandag

STATE OF CALIFORNIA

California Energy Resources Conservation  
and Development Commission

Application for Certification )  
for the Carlsbad Energy )  
Center Project )  
\_\_\_\_\_)

Docket 07-AFC-6

Certificate of Service

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-6  
1516 Ninth Street, MS-15  
Sacramento, CA 95814-5512

Applicant

David Lloyd  
Carlsbad Energy Center, LLC  
1817 Aston Avenue, Suite 104  
Carlsbad, CA 92008  
[David.Lloyd@nrgenergy.com](mailto:David.Lloyd@nrgenergy.com)

Tim Hemig, Vice President  
Carlsbad Energy Center, LLC  
1817 Aston Avenue, Suite 104  
Carlsbad, CA 92008  
[Tim.Hemig@nrgenergy.com](mailto:Tim.Hemig@nrgenergy.com)

Applicant's Consultants

Robert Mason  
CH2M Hill, Inc.  
6 Hutton Center 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  
980 Ninth Street, Ste 1900  
Sacramento, CA 95814  
[jamckinsey@Stoel.com](mailto:jamckinsey@Stoel.com)

Interested Agencies

California ISO  
P. O. Box 639014  
Folsom, CA 95763-9014  
[e-recipient@CAISO.com](mailto:e-recipient@CAISO.com)

City of Carlsbad  
Joseph Garuba  
Municipals Project Manager  
Ron Ball, Esq. City Attorney  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008  
[jgaru@carlsbad.ca.us](mailto:jgaru@carlsbad.ca.us)  
[rball@carlsbad.ca.us](mailto:rball@carlsbad.ca.us)

Intervenors  
California Unions for Reliable Energy  
Gloria D. Smith & Marc D Joseph  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080

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

Power of Vision  
Julie Baker and Arnold Roe, Ph.D.  
P. O. Box 131302  
Carlsbad, California 92013  
[powerofvision@roadrunner.com](mailto:powerofvision@roadrunner.com)

Terramar Association  
Kerry Siekman & Catherine Miller  
5239 El Arbol  
Carlsbad, CA 92008  
[Siekman1@att.net](mailto:Siekman1@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](mailto:gsmith@adamsbroadwell.com)

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

Energy Commission

James D. Boyd  
Commissioner and Presiding Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

Karen Douglas  
Commissioner and Associate Member  
[kldouglas@energy.state.ca.us](mailto:kldouglas@energy.state.ca.us)

Paul Kramer  
Hearing Officer  
[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)

Elena Miller  
Public Advisor's Office  
[publicadvisor@energy.state.ca.us](mailto:publicadvisor@energy.state.ca.us)

Declaration of Service

I, Allan J Thompson, declare that on April 16, 2009 I deposited a copy of the attached “City of Carlsbad Petition to Compel Response to Data Requests” in the United States mail with first class postage thereon fully prepaid and addressed to the Energy Commission docket office and sent transmission by electronic mail 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.

April 16, 2009

/S/ Allan J Thompson  
Allan J. Thompson