

To: Vice Chairman James D. Boyd, Presiding Member
Commissioner Karen Douglas, Associate Member
Paul Kramer, Hearing Officer

From: Kerry Siekmann
5239 El Arbol Dr.
Carlsbad, Ca. 92008
Terramar's Status Report 7

Date: June 4, 2009

**Subject: CARLSBAD ENERGY CENTER PROJECT (07-AFC-6) STATUS
REPORT #7**

Please find a letter with attachments that were recently sent to the corporate headquarters of NRG. The letter identifies a number of concerns regarding misleading statements made to the public by NRG West in their newsletters about the CECP.

cc: proof of service list

attachments

DOCKET

07-AFC-6

DATE June 04 2009

RECD. June 04 2009

Kerry Siekmann
5239 El Arbol Dr.
Carlsbad, Ca. 92008
760-438-5611

May 26, 2009

David Crane, CEO
NRG Energy, Inc.
211 Carnegie Center
Princeton, N.J. 08540-6213

Dear Mr. Crane,

There are issues of deep concern occurring in Carlsbad, Ca. that need your attention. NRG West has been mailing out copies of the “Carlsbad Energy Center Powering California with NRG” that include many misleading statements and manipulation of information. As you are aware from your company Code of Conduct, misleading the public is wrong and NRG West has a responsibility to the community to provide truthful information without manipulation as;

“It is NRG’s policy to deal fairly with its employees, customers, business associates, partners, suppliers, competitors and the governments of all jurisdictions in which it operates. You should not take unfair advantage of anyone through manipulation, unfair-dealing concealment, abuse of privileged information, misrepresentation of material facts or any other practice.”

Though I oppose the CEC (California Energy Commission) licensing of the CECP (Carlsbad Energy Center Project) project, I respect the fact that the public needs truthful information to make their decision. They do not deserve to be misled by manipulation of fact or incomplete information giving a false impression.

In Issue 1, 2 and 5 a “lower carbon footprint” and “enhanced local air quality” are two of the environmental benefits proclaimed by NRG West. The facts show a very different story. The carbon footprint in our community will increase dramatically if the Encina units are “replaced” by the CECP. The proposed CECP may have a lower carbon footprint per megawatt hour but since the new units will be producing vastly more megawatt hours than the old units, the carbon footprint will actually increase. As for “enhanced local air quality” air pollution emissions will increase with the installation of the CECP as compared to the past few years from Encina Units 1, 2, & 3.

NRG West’s Issue 8 goes on to state, “The San Diego County Air Pollution Control District (APCD) and the California Energy Commission (CEC) staff did not have concerns or issues regarding greenhouse gas emissions as they relate to the Carlsbad Energy Center Project (CECP).” The APCD and CEC at this point in time, do not have any regulations concerning greenhouse gas emissions. The public is erroneously led to think that the CECP is following imaginary guidelines.

Another area of great importance is visual impact. NRG West’s visual impact statements read, “The new power plant will be concealed by terrain...” and “The substantially smaller Carlsbad Energy Center will be concealed by foliage and terrain west of the I-5 freeway. By using a location which is approximately 30 feet below grade, visual impacts that often accompany power

plants will be reduced significantly.” This, or similar statements, can be found in Issues 1, 2, 5, 6, and 8 of copies of the "Carlsbad Energy Center Powering California with NRG.

These statements lead one to assume visual impacts will be minimal. Please note the attached letter from Allan Kosup, I-5 Corridor Director, and dated May 6, 2009. The letter clearly states that all of the terrain and foliage will be eliminated during the I-5 widening.

This leads to the next issue regarding the I-5 widening. “NRG and Caltrans have agreed to work together on this important matter and will determine viable solutions to maintain appropriate barriers, including trees and berms between the project and I-5 for safety and visual screening.”, as quoted from Issue 8. We are led to believe that NRG and Caltrans are working together but Allan Kosup’s May 6 letter tells a very different story. One that says Caltrans has received no information regarding their February request.

The Carlsbad Fire Chief is dealing with a similar problem. Issue 8 states, “NRG is committed to continuing to work with the City Fire Marshal and Fire Department to ensure that the CECP meets all fire code and emergency response requirements. In the PSA, CEC staff found that the CECP will comply with all applicable federal, state and local fire safety and emergency response requirements, as well as all applicable hazardous material management requirements. NRG has and continues to provide detailed information to the CEC and the City demonstrating conformance with fire code requirements and the reduction of onsite fire risk with modern fire prevention devices and systems.”

Yet per the attached April 28, 2009 letter from Kevin Crawford, Carlsbad Fire Chief, a very different story is unfolding. This is a story that would and should cause the public great concern regarding our safety.

Another area of concern is NRG West’s attempt to cast blame on local government in the public eye. In Issue 6 it states, “As a result of the City of Carlsbad’s reluctance to provide requested treated wastewater to the project, NRG has proposed a small ocean water purification system to provide water for the operation of the project.”

Per the City of Carlsbad, the actual issue was availability since the treated wastewater was fully subscribed especially during the summer months. Please note that when planning their application, NRG never went to the city to request the needed water.

Regarding this same subject there is a prior, conflicting quote in Issue 5 that states, “NRG West is taking the Governor’s warning and the San “Diego County Water Authority’s long-term plans very seriously and is willing to conserve potable and reclaimed water supplies for other uses. Consequently, NRG West has included an ocean water purification system (reverse osmosis) in its refined permit application to the California Energy Commission...” It is remarkable how vastly different the two prior statements are yet in neither statement is the public told the truth about why NRG West must install an ocean water purification system.

In Issue 3 NRG West claimed, “The CECP will result in the permanent reduction of 225 million gallons per day of seawater for cooling of Units 1, 2 and 3 directly resulting in the protection of marine life.” This would be true if the three units being replaced operated 24 hours a day every day of the year. According to a letter sent to the C E C January, 2009 from NRG's lawyers, with its accompanying "Center for Biological Diversity Data Responses", Table DRC3-1, Units 1, 2 & 3 operated for a total of 3972 hours in 2007 (average daily usage of 15% of capacity) and 2952 hours in 2008 (average of 11% of capacity or 25.27 million gallons/day. The truth is that

units 1, 2 & 3 have not used their maximum ocean cooling water capacity of 225 million gallons per day for years!

Probably the broadest piece of misinformation is the fact that the public thinks the new plant will replace the old plant. In Issues 1, 2, 6 it says, “Replacing existing units 1, 2 and 3 with more efficient and lower profile power generators” and in Issue 5 it says, “By phasing out the existing power plant, the City of Carlsbad will be able to eventually meet its goal of using the site for community and commercial development.”

Over and over again people are shocked when they are told there will be two plants. They don’t realize that if the new one is built, the old one will stay. This is a very important fact. The public deserves to understand the whole story.

Though a vast amount of misinformation is being printed there are those who oppose the CECP. During the PSA (Preliminary Staff Assessment) workshop many spoke out in opposition of the new plant. Yet in Issue 8, NRG West printed, “Approximately 100 people attended the two-day workshop where several Carlsbad citizens voiced their support for the project.” I attended the workshop and during public comment I observed many more than 100 people in attendance. There was a long line of people wrapping around the back of the conference room waiting in line to speak in opposition of the project. Only a few spoke in favor. NRG West’s statement minimizes the public outrage that occurred that evening.

One of the biggest concerns on people’s minds about this project is “do we need the power”?

In Issue 8 NRG West printed, “NRG remains committed to bringing this important energy project online to meet the needs of the region.”

At this point there is no guarantee that even if we did need the power that it would stay in the region. NRG has no contract with SDG&E. Per my discussion with CalISO the power can be sold on the open market since there is no contract. NRG is playing on the fears of the public with this unsupported promise.

My intent in this letter has been to enlighten you regarding these serious matters of misinformation. Next comes resolving the situation. I would suggest that an apology be made to the public and that the misinformation be pointed out and corrected. In addition, I would ask that corporate continue to monitor communications to ensure that the misinformation stops.

I look forward to your response regarding these matters.

Sincerely,

Kerry Siekmann

Enclosure

cc: Meredith Moore

Lori Neuman

City of Carlsbad



City of Carlsbad

Office of the Fire Chief

April 28, 2009

Mr. Mike Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

DOCKET	
07-AFC-4	
DATE	April 28 2009
RECD.	April 28 2009

CARLSBAD FIRE DEPARTMENT'S REQUEST FOR INFORMATION

Dear Mr. Monasmith,

This letter is to express Carlsbad Fire Department's ongoing concern regarding the lack of accurate information related to the proposed Carlsbad Energy Center Project (CECP).

As you are aware, the Carlsbad Fire Department (CFD) has requested on numerous occasions that the Applicant, NRG, provide a comprehensive site map which incorporates topographical and elevation information. To date, these requests have gone unfulfilled. The site map that CFD is requesting should include not only relevant details regarding the CECP, but also boundary lines and project characteristics (where available) related to adjacent developments, such as: the widening of Interstate 5, improvements to the Carlsbad/Vista Sewer Interceptor, the Coastal Rail Trail, and the double tracking of the railroad.

The CECP represents a significant addition to the Encina Power Station industrial complex. As the local agency that is ultimately responsible for providing fire protection and emergency services, CFD believes it is appropriate to request sufficient information in order to provide its comments and suggestions on the proposed power plant to the California Energy Commission (Energy Commission) during the licensing process.

CFD's preferred action would be for NRG to make available the information requested, and after a reasonable review period (60 days), CFD would be able to supply the Energy Commission with its comments.

Please be aware that without the requested information, CFD will be precluded from accurately assessing its ability to provide fire protection and emergency services to the power plant. If left unaddressed, the Fire Department will be forced to request that the Energy Commission incorporate a broad range of project conditions, up to and including the provision of private, onsite fire protection and emergency response.

I look forward to the timely resolution of the Carlsbad Fire Department's concerns. If you have any questions, please call me at (760) 931- 2141.

Respectfully submitted,

Kevin Crawford
Fire Chief

cc: Proof of Service List (Revised 2/18/2009)





BEFORE 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

APPLICATION FOR CERTIFICATION
FOR THE **CARLSBAD ENERGY
CENTER PROJECT**

Docket No. 07-AFC-6

PROOF OF SERVICE
(Revised 2/18/2009)

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DECLARATION OF SERVICE

I, Andrea Dykes, declare that on April 28, 2009, I served and filed copies of the attached document. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/carlsbad/index.html\]](http://www.energy.ca.gov/sitingcases/carlsbad/index.html). The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service^{*} list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

 X sent electronically to all email addresses on the Proof of Service list;

 by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

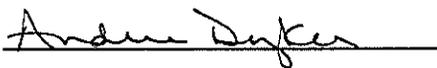
 X sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

 depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.





City of Carlsbad

Office of the City Manager

June 2, 2009

DOCKET	
07-AFC-6	
DATE	<u>JUN 02 2009</u>
RECD.	<u>JUN 02 2009</u>

Mike Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Re: Carlsbad Energy Center Project (07-AFC-6) – May 6, 2009 Caltrans Letter

Dear Mr. Monasmith:

The City of Carlsbad respectfully submits the following letter from Caltrans for docketing. This letter, dated May 6, 2009, is regarding the Carlsbad Energy Center Project (CECP).

If you have any questions, please feel free to contact me at 760-434-2820.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Garuba".

Joe Garuba
Municipal Projects Manager

JG:ad

c: Proof of Service List (Revised 5/11/2009)



DEPARTMENT OF TRANSPORTATION

DISTRICT 11

4050 TAYLOR STREET

SAN DIEGO, CA 92110

PHONE (619) 688-3611

FAX (619) 688-2587

TTY (619) 688-3214

*Flex your power!
Be energy efficient!*

May 6, 2009

City of Carlsbad
Joe Garuba, Municipal Project Manager
1200 Carlsbad Village Drive
Carlsbad, CA 92008-1989

Dear Mr. Garuba:

The California Department of Transportation (Caltrans) has received your correspondence dated April 28, 2009 requesting an update on the progress of the I-5 North Coast Corridor (I-5 NCC) Project, the region's position on the construction of the I-5 NCC Project and to reiterate our previous comments on the proposed Carlsbad Energy Center Project (CECP).

With the full support and financial commitment from the region, Caltrans is in the process of finalizing the Draft Environmental Document (DED) for the I-5 NCC Project. The Notice of Intent was issued and Scoping meetings have been completed. All of the technical and environmental studies are completed. The Federal Highway Administration is in the process of reviewing the DED. Public release of the DED is planned for the summer of 2009.

As you know, Caltrans has conducted extensive public outreach for the I-5 NCC Project in the City of Carlsbad. The City, community and elected officials are well informed of the freeway widening, including the Direct Access ramp in the area of the proposed CECP. Caltrans has sent letters to the California Energy Commission (CEC) dated March 25, 2008 and February 5, 2009 with comments on the proposed CECP and emphasizing the National, State, Regional, and local commitment to improve transportation on I-5 and the LOSSAN Rail corridor. Comments on these previous letters demonstrating why the implementation of the I-5 NCC Project is not speculative can be summarized as follows:

1. The formal environmental process for the 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.

Mr. Joe Garuba
May 6, 2009
Page 2

2. I-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.

In our February 2009 letter to the CEC it was clearly stated that "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". (Emphasis added.) Given the support for the project, the commitment of regional funding, the fact that all of the alternatives impact the existing screening, and that the DED is nearing completion, we do not believe the I-5 widening is speculative.

To date we have received no information regarding our request in the February 2009 letter that "*a visual analysis be completed assuming both projects are constructed.*" Due to the limited space in this area, if a jointly-developed plan to address potential visual impacts is not accommodated as part of the proposed CECP, there is a strong likelihood that future mitigation will be precluded.

In your letter you are also asking if Caltrans has a long-term mitigation strategy for shifting the freeway expansion to the east in the vicinity of the CECP. One of Caltrans' missions is to build cost-effective transportation solutions for California taxpayers. Moving the entire Interstate freeway to the east is not a cost-effective solution to mitigate potential visual impacts and will not be included as part of the I-5 NCC Project.

It is our understanding that CEC staff has considered the I-5 NCC Project and the LOSSAN rail corridor projects to be "speculative" because the DED will not be completed before the CECP hearing. It is also our understanding that counsel for the CECP has argued the I-5 NCC Project and LOSSAN rail projects are "non-existent or unspecified projects." (CEC LLC's Opposition to City of Carlsbad's Petition to Compel Response to Requests, Docket 07-AFC-6, May 1, 2009.)

Given the foregoing description of the tangible activities of SANDAG and the Department of Transportation, it is plain that neither CEC staff nor NRG LLC's counsel appreciate how far along these complex transportation projects are in terms of delivery.

Mr. Joe Garuba
May 6, 2009
Page 3

More importantly, it appears CEC staff and NRG LLC's counsel applied an incorrect standard when determining whether to conduct a cumulative impacts analysis. The standard used is in conflict with CECP CEQA/CRP compliance since it is not whether another "project" has a DEIR, negative declaration or is otherwise exempt from CEQA analysis, but simply whether there are cumulative impacts. (See, e.g., CEQA Guidelines section 15130(a).) Further, it does not matter that the other project may never be built- the appropriate analysis is whether the other projects are a "realistic possibility". (*City of Antioch v. City Council of the City of Pittsburgh* (1986) 187 Cal.App.3d 1325, 1336-1338; *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892.)

Similarly, other CEQA commentators have stated "Agencies should also be aware that some "future projects" may be "probable" even though they may never be built. What matters is whether the potential future projects appear foreseeable at the time of EIR preparation." *Remy, Thomas Moose & Manley*, "Guide to CEQA, 11th ed. 2006, Solano Press p. 472.)

To the best of our knowledge, CEC staff has not made any determination as to whether the I-5 NCC Project or the LOSSAN projects are a "realistic possibility" or are "foreseeable" – only that their DED is not yet finalized.

Again, based upon the body of work already completed, both the I-5NCC Project and the LOSSAN rail projects are not only "probable", given their regional and inter-regional priority they are "likely" and a substantial amount of resources have already been committed to delivering them for Californians.

If you have any questions please call me at (619) 688-3611 or Arturo Jacobo, Project Manager, at (619) 688-6816.

Sincerely,



ALLAN KOSUP
I-5 Corridor Director

Cc: California Energy Commission
Docket 07-AFC-6
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Sacramento, CA 95814-5512

David Lloyd,
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Arturo Jacobo, Project Manager, Caltrans District 11



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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APPLICATION FOR CERTIFICATION
FOR THE **CARLSBAD ENERGY
CENTER PROJECT**

**Docket No. 07-AFC-6
PROOF OF SERVICE**
(Revised 5/11/2009)

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DECLARATION OF SERVICE

I, Andrea Dykes, declare that on June 2, 2009, I served and filed copies of the attached document. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[<http://www.energy.ca.gov/sitingcases/carlsbad/index.html>]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

 X sent electronically to all email addresses on the Proof of Service list;

 by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

 X sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

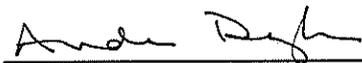
OR

 depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

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1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct.





BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**APPLICATION FOR CERTIFICATION
FOR THE CARLSBAD ENERGY
CENTER PROJECT**

**Docket No. 07-AFC-6
PROOF OF SERVICE**
(Revised 5/11/2009)

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DECLARATION OF SERVICE

I, Kerry Siekmann, declare that on 6/4/09, I served and filed copies of the attached, Status Report 7 Letters NRG & ATTACHMENTS. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[\[http://www.energy.ca.gov/sitingcases/carlsbad/index.html\]](http://www.energy.ca.gov/sitingcases/carlsbad/index.html). The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

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CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-6

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I declare under penalty of perjury that the foregoing is true and correct.

Kerry Siekmann