

DOCKET

07-AFC-6

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STATE OF CALIFORNIA
Energy Resources Conservation and
Development Commission

In the Matter of:)
Application for Certification for the)
Carlsbad Energy Center Project)
(CECP))
_____)

Docket No 07-AFC-6

City of Carlsbad and Carlsbad Redevelopment Agency
Motion to Reopen Proceeding and Accept Testimony and Exhibits

March 14, 2011

Ronald R. Ball
City Attorney for City of Carlsbad and
General Counsel for Carlsbad Redevelopment Agency
1200 Carlsbad Village Drive
Carlsbad, CA 92008
(760) 434-2891

Allan J Thompson
Special Counsel for City of Carlsbad and
Carlsbad Redevelopment Agency
21 "C" Orinda Way, #314
Orinda, CA 94563
(925) 258-9962

STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

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1. Introduction

Pursuant to 20 CCR 1716.5 intervenors City of Carlsbad and the Carlsbad Redevelopment Agency, hereby move to reopen the record in this proceeding. The record in this proceeding was closed at the completion of its hearings on February 4, 2010. Since that time, over one year ago, the parties have recognized that a number of documents affecting this Committee's determinations have been issued. These documents are not formally in the record. Additionally, the City and the Redevelopment Agency have seen a number of events that affect their positions before this Commission. These events were anticipated, but are not in the record and the events (described below) were unforeseen, unanticipated or could not be known at the time of the closing of the evidentiary record. The City of Carlsbad and the Carlsbad Redevelopment Agency believe the hearing record is incomplete and cannot form the basis for key Commission determinations without these documents and testimony explaining the impacts of these events and determinations.

Intervenors additionally believe that the Commission's rules of practice and procedure anticipate the issuance of a Presiding Members Proposed Decision shortly after the close of the hearings. (See 20 CCR 1749) It is in the best interests of the parties and the Commission

to reopen the record, hold a hearing so that all pertinent testimony could be included in the record, and then close the record again at the close of these hearings.

The City and the Redevelopment Agency are only requesting here that the record be reopened in a select number of areas (See below), although it stands ready to address any areas that the Committee believes should be supplemented for the record.

2. Areas to be Reopened:

(a) Worker Safety.

The primary issue in the area of Worker Safety is the threat of fire and the ability of Carlsbad fire personnel to adequately respond to fire and emergency incidents. Staff and Applicant argue that evidence in the record indicates that there is little risk of fire at the proposed power plant. CEC staff offered testimony that fires and explosions at power plants are rare events, and relied upon their view that such incidents are “very infrequent” (Staff Opening Brief, page 46). Following the hearings, the Carlsbad Fire Department has paid special attention to fire and emergency incidents at power generation facilities. Intervenors have observed with growing concern a series of fires at power plants, both inside and outside California. The events of the past year belie the testimony provided on February 4, 2010, in which CEC and NRG experts testified that no major emergencies have occurred at power plants in California, and that a fire department’s role in such emergencies would be “mop-up” duties after automatic suppression systems extinguish any such fire.

Below is a partial list, compiled from published reports, on power plant fires since that testimony:

- February 7, 2010, explosion at the Kleen Energy Power Plant in Middletown, Conn. killed six workers.
- May 4, 2010, a fire at a Pasadena Water and Power Plant required a local fire department response.
- December 22, 2010, a fire in a transformer adjacent to the switchyard at the Palomar Energy Center in Escondido burned for more than 24 hours, requiring a multi-agency response.
- January 12, 2011, a fire at the Humboldt Bay Power Plant in Eureka required a local fire department response.

- January 19, 2011, a fire at the Chehalis (Wash.) Power Plant burned for nearly two hours, requiring a multi-agency response.

Carlsbad Fire Department officials have testified that the CECP design allows for insufficient access to the plant. Additionally, roads within the plant are too narrow for fire apparatus to stage and pass each other. An upper rim road above the plant pit is inadequate because it is too narrow for fire apparatus, and does not completely encircle the plant. The proposed closed-loop water supply is also insufficient.

Even conceding fires at power plants are rare, the record shows no plant is immune to such an emergency. CFD has repeatedly stated that CEC will have only one opportunity to approve a plant layout that will ensure the safety of plant workers, emergency responders and Carlsbad residents and visitors, and that is now, during the licensing process. The City and the Redevelopment Agency desire to submit testimony, based upon events of the past year that refutes testimony of Staff and Applicant that power plant emergency response incidents are rare. Accordingly, this proceeding should be re-opened to receive official documents and testimony concerning the power plant fires which have occurred since the public hearing was closed and the implications of these fires on public safety in the project area.

(b) Once-through Cooling.

On May 27, 2010 Staff Counsel Ratliff filed a memorandum with this Committee which included the State Water Resources Control Board "Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling." (OTC Policy) The State Board adopted the OTC Policy on May 4, 2010, approximately three months after the close of the public hearing in this matter. The parties briefed this regulation, but the basic document is not in this record. Of greater import is the requirement that NRG, and coastal once-through power plants, must file a plan of compliance with the State Board on or before April 1, 2011. This filing is likely to provide very important information for the Commission's determination on this project as it relates to the future of the Encina Power Station and source of water for the CECP. Staff admitted at the public hearing that it did not consider the OTC Policy in the analysis of project or cumulative impacts on water supply (RT 2/4/10; pp231-233), although Staff opined, in its opening brief, that Encina units 4 & 5 "may operate beyond 2017". Staff also acknowledged that the only feasible way to comply with the OTC Policy would be to retire Units 4 and 5.

Accordingly, this proceeding should be reopened to receive the OTC Policy into the record and to address the impact of the OTC Policy on water supply for the project.

(c) Caltrans Highway I-5 Widening.

Caltrans issued a Draft EIR/EIS for the Interstate 5 North Coast Corridor widening project in June, 2010, approximately four months after the close of the public hearing. This cumulative project was discussed at the hearings, but at that time the Draft EIR/EIS had not been issued. The City and the Redevelopment Agency have contended that it is impossible to satisfy both the Carlsbad Fire Chief requirement for a 50 foot lower perimeter road and a 25 foot upper road and have enough land between the freeway and the power plant for decorative screening. Now that Caltrans has issued the Draft EIR/EIS, the combined impacts from the Carlsbad Fire Chief requirement of increased roadways and the decreased amount of land for visual mitigation can be determined. Accordingly, this proceeding should be reopened to receive the Caltrans Draft EIR/EIS into the record and to address the cumulative impact of the freeway widening on fire safety and visual resources.

(d) SP 144 Redevelopment.

The City and Redevelopment Agency testified on the plans to redevelop the parcel to a higher use. Intervenor are prepared to submit documents illustrating that these plans are not dreams or wishes. Plans for zoning changes for the SP 144 area are about to undergo environmental review necessary to effect a zoning change. Indeed, the City Council of the City of Carlsbad received a report and update on the progress being made toward changing the land use and zoning laws for the coastal plan as it relates to electrical power generation plants. That action occurred at the City Council's meeting of October 12, 2010 in which it adopted an ordinance extending the urgency ordinance prohibiting any new or expanded thermal electric power generation facilities within Carlsbad's coastal zone and authorized the related land-use studies. That action should be completed by October 20, 2011.

(e) Vista/Carlsbad Interceptor Sewer Plant and Coastal Rail Trail.

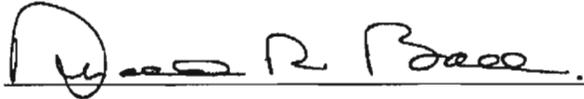
The City of Carlsbad has two projects that conflict with the CECP – the Vista/Carlsbad Interceptor Sewer Plant and the Coastal Rail Trail. Both of these projects were initiated prior to the filing of the CECP and both projects continue on the development path. On March 8, 2011

NRG filed a letter with the City where it finally admits that the CECP is incompatible with the sewer line and the sewer upgrade. The City has no choice but to proceed to a decision on the sewer upgrade project as soon as practicable and the Coastal rail trail is an integral part of the sewer upgrade. The City anticipates a final approval/disapproval decision by the City will come over the next month. It would be advantageous to explore the extent that CECP, and the City, believe the CECP is in conflict and incompatible with the two City projects.

Intervenors recognize that staff filed a memorandum on May 27, 2010 with this Committee referencing the California Supreme Court case of *Communities for a Better Environment vs. South Coast Air Quality Management District*. The City and Redevelopment Agency do not oppose staff testimony on the implications of this decision.

The City and Redevelopment Agency are mindful of state budget issues and do not object to a hearing to be held in Sacramento.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Ronald R. Ball", is written over a horizontal line.

Ronald R, Ball
City Attorney for City of Carlsbad, and
General Counsel for Carlsbad Redevelopment Agency