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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:	)	DOCKET NO: 07-AFC-6
CARLSBAD ENERGY CENTER PROJECT	)	CENTER FOR BIOLOGICAL DIVERSITY'S RESPONSE IN SUPPORT OF CITY OF CARLSBAD'S MOTION TO TAKE OFFICIAL NOTICE AND THE CENTER'S MOTION TO TAKE OFFICIAL NOTICE AND RE-OPEN THE EVIDENTIARY RECORD

I. INTRODUCTION

The Center for Biological Diversity ("Center") hereby files the following response in support of the City of Carlsbad and Carlsbad Redevelopment Agency's Motion to Take Official Notice ("Carlsbad Motion") pursuant to Cal. Code of Regs., tit. 20 Sec. 1716.5. The Center also makes a Motion to Take Official Notice for documents not currently included in the Evidentiary Record and a Motion to Reopen the Evidentiary Record for those documents not subject to Official Notice. All of these documents contain information that is relevant to the proceeding and address factual errors in the Presiding Member's Proposed Decision ("PMPD") and/or new information relevant to the PMPD. Alternatively, if the Commission denies the request for Official Notice, the Center moves to reopen the Evidentiary Record to include all of the documents discussed in this Response and Motion.

II. ARGUMENT

A. The Commission Should Grant the Carlsbad Motion.

The Carlsbad Motion requests Official Notice of the Application of SDG&E for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center, and Quail Brush Power. (Carlsbad Motion.) The Commission may take Official Notice of any generally accepted matter within its field of competence. (20 Cal. Code Reg. § 1213.) The Public Utilities Commission filings are within the field of competence of the Energy Commission, provide a basis for a No Project Alternative that was not discussed in the PMPD, and demonstrate that the PMPD relies upon a faulty No Project Alternative analysis. (See also Center for Biological Diversity's Comments on the PMPD ("Comments") Sec. I.C.3 & I.D.) Furthermore, SDG&E's Application sets forth new facts that will alter the PMPD's cumulative impacts analysis. (See also Comments at 17-18.)

B. Request to Take Official Notice

The following documents are within the competence of the Energy Commission because they relate to local reliability, the status of reliability-must-run contracts, solar pricing, renewable integration, and use of LNG at the Carlsbad Energy Center Project. Pursuant to California Code of Regulations, title 20, section 1213, the Center respectfully requests the Commission take Official Notice of the following matters:

Exhibit A: CPUC Final Report on the Audit of the Encina Power Plant, December 10, 2010.

Exhibit B: CAISO 2009 RMR/Black Start/Dual Fuel Contract Status

Exhibit C: CAISO 2008 RMR/Black Start/Dual Fuel Contract Status

Exhibit D: CAISO Letter to Mr. Randy Hickok re: RMR status terminated, October 15, 2010

Exhibit E: CAISO 2012 Local Capacity Technical Analysis, April 29, 2011

Exhibit F: SCE Submission of Contracts for Procurement of Renewable Energy Resulting from Renewables Standard Contracts Program, January 31, 2011

Exhibit G: San Diego County Air Pollution Control District Comments on the Air Resources Board May 19, 2010, Public Meeting on Revising the Compressed Natural Gas Fuel Specifications for Motor Vehicles, June 14, 2010.

Exhibit H: CEC West Coast LNG Projects and Proposals at 4, December 2010.

Exhibit I: CAISO Integration of Renewable Resources – 20% RPS, August 31, 2010.

Exhibit J: CAISO Summary of Preliminary Results of 33% Renewable Integration Study – 2010 CPUC LTPP Docket No. R.10-05-006, May 20, 2011.

Exhibit K: CEC News Release "Energy Commission Licenses Two East Bay Power Plants," May 18, 2011.

Exhibits A – D are relevant to the determinations to be made by this Commission because they show that the PMPD relies upon factual errors regarding the reliability must run ("RMR") status of plants in the San Diego area in support of its conclusion that the CECP is necessary in order to displace GHG emissions from these older, less-efficient plants within the electricity

system. These documents show that the RMR contract of the Encina plant was released at the end of 2007 and that the RMR contract for South Bay was released at the end of 2010, proving that, in fact, the CECP is not necessary to allow the release of these RMR contracts. (See also Comments Sec. I.C.1.)

Exhibits D and E are also relevant to the determinations to be made by this Commission because they illustrate how the electric system and the assumptions based upon it have changed since the application for CECP was first reviewed and, together with the SDG&E Testimony submitted by the City of Carlsbad, undermine the PMPD's argument that the CECP is needed for local reliability and to allow full retirement of the South Bay and Encina power plants. These documents explain that consumption and generation needs have changed in the San Diego region, that South Bay has already been retired, and that with contracts from expected new generation (which do not include CECP), there will be enough capacity to meet San Diego's local reliability needs and to allow full retirement of the Encina plant prior to the 2017 deadline for compliance with new once-through cooling regulations. (See also Comments Sec. I.C.2.)

Exhibit F is relevant to the determinations to be made by this Commission because in the proposed decision the PMPD concludes that "alternative technologies are not capable of meeting the project objectives" (PMPD Alternatives at 18) and dismisses the most promising of these alternatives – rooftop solar PV, which the PMPD admits is technically capable of providing all of San Diego's peak energy needs – as being too expensive to compete with a project like CECP. (*Id.* at 14-15.) However, Exhibit F shows that, contrary to these claims, utility-scale rooftop solar projects are cost effective and one southern California utility is entering into contracts for 250MW worth of rooftop PV for less than the cost of a facility like CECP. (See also Comments Sec. I.C.6.)

Exhibits G and H are relevant to the determinations to be made by this Commission in that they show that LNG use in the San Diego region is not, as the PMPD asserts, speculative. (PMPD GHG at 15.) LNG use in San Diego has been occurring for some time and is likely to ramp up significantly (to near 100 percent) in light of recent actions by the California Air Resources Board. This reasonably foreseeable scenario must be analyzed as part of the environmental review. (See also Comments Sec. I.C.5.)

Exhibits I and J are relevant to the determinations to be made by this Commission because they undermine the PMPD's main argument that the CECP is necessary for the integration of renewables. These documents show that, in fact, the California ISO has determined that the existing fleet provides sufficient operational flexibility to reliably integrate renewables for the 20 percent RPS goal and will likely be sufficient to meet the 33 percent RPS goal as well. These documents counter the assertions made in the PMPD that more gas-fired generation is needed as more renewables are added to California's electricity system. (See also Comments Sec. I.C.4.)

Exhibit K is relevant to the determinations to be made by this Commission because it identifies two newly approved power plants that were not considered in the cumulative impacts analysis in the PMPD. (See also Comments at 18.)

C. Alternatively, the Commission Should Reopen the Administrative Record to Include All Documents Discussed in Sections A and B.

By taking Official Notice of Exhibits A – K, those documents become part of the Evidentiary Record. As discussed above, each of the documents contains information that shows that the PMPD rests parts of its analysis on factual errors. Alternatively, if the Commission does not take Official Notice of all or some of Exhibits A – K and grant the Carlsbad Motion, the Commission should grant the motion to reopen the evidentiary record and allow the inclusion of

this information in order to have a final decision that is predicated on accurate statements that inform the public and decision makers about the environmental effects of the project. (See Cal. Public Resources Code § 21000 et. seq.)

The Center also moves to reopen the administrative record to include:

Exhibit L: January 6, 2011 Unified Port of San Diego article "South Bay Power Plant Ceases Operations."

Exhibit M: May 20, 2011 Unified Port of San Diego article "Update on South Bay Power Plant Removal."

Exhibit N: February 1, 2011 Clean Technica article "SCE Buys 20 Years of Solar Power for Less than Natural Gas"

Exhibit O: February 8, 2011 Renewable Energy World article "Solar PV Becoming Cheaper than Gas in California."

Exhibit P: San Diego Union Tribune article "Gas from afar pollutes here, critics say"

Exhibit Q: "Mexico's Costa Azul re-exports first LNG cargo," Platts, January 10, 2011.

Facts in each of these articles undermine the veracity of certain statements or findings in the PMPD. Facts in Exhibits L and M are relevant to the determinations to be made by this Commission because they further undermine the PMPD's conclusion that the CECP was needed for the retirement of the South Bay power plant, which has already been shut down. (See also Comments Sec. I.C.2.) Exhibits N and O are relevant to the determinations to be made by this Commission because they highlight the cost-effectiveness of rooftop solar PV in stories regarding SCE's new 250MW-worth of rooftop solar contracts for below market price referent. (See also Comments Sec. I.C.6.) Exhibits P and Q are relevant to the determinations to be made by this Commission as they further illustrate that LNG use in San Diego is not speculative. (See also Comments Sec. I.C.5.)

Due process requires that the Commission consider the information in Exhibits A-Q and in the Carlsbad Motion documents. (See Cal. Code of Regs., tit. 20 § 1754(b) [(the commission shall consider additional evidence at the hearing if "due process requires"].) Factual errors in the decision also require consideration of this information. (See Cal. Code of Regs., tit. 20 § 1720 [a petition for reconsideration can set forth "an error in fact"].)

III. CONCLUSION

For the foregoing reasons, the Center respectfully requests that the Commission grant this motion and include all the documents discussed in the Response and Motion in the proceeding's evidentiary record.

DATED: June 8, 2011

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