

State of California

Energy Resources Conservation and  
Development Commission

In the Matter of:	)	Docket No.
The Application for Certification of the	)	07-AFC-6
Carlsbad Energy Center Project	)	

Comments of Intervener Terramar on the Errata to the Presiding Member's  
Proposed Decision

Kerry Siekmann  
Catherine Miller  
5239 El Arbol Dr.  
Carlsbad, Ca. 92008  
760-438-5611  
June 28, 2011

State of California

Energy Resources Conservation and  
Development Commission

In the Matter of: ) Docket No.  
The Application for Certification of the ) 07-AFC-6  
Carlsbad Energy Center Project )

**Errata Comments Introduction**

Intervener Terramar represents the neighborhood south of the Encina Power Station site. We have lived next to the Encina power plant for nearly sixty years. If another power plant is to be built next to our neighborhood we must rely on the California Energy Commission (CEC) to follow required Laws, Ordinances, Regulations and Standards (LORS) in all matters concerning the certification of the Carlsbad Energy Center Project (CECP);

*The Energy Commission must determine whether the CECP will be designed, sited, and operated to ensure safe and reliable operation. (Pub. Res. Code, § 25520(b); Cal. Code Regs., tit. 20, § 1752(c)(2) PMPD Reliability, p. 1*

Up to this point the CEC’s Errata and PMPD have disregarded LORS; including the California Coastal Act and California Environmental Quality Act (CEQA) and local LORS without making the proper overrides. The Commission cannot license a project that conflicts with one or more LORS unless it finds:

*"that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity." (Pub. Res. Code, § 25525)*

This determination must be made based on the totality of the evidence of record and consider environmental impacts, consumer benefits, and electric system reliability. Intervener Terramar can only conclude that overrides have been avoided as the CEC is not able to prove need or public convenience for the Carlsbad Energy Center Project. Therefore, the project should be turned down for certification.

**Errata Comments**

The California Energy Commission errs by calling themselves the “fire code official” in the Errata document. The CEC named the Carlsbad Fire Department as the California Fire Code enforcement authority in the Presiding Member’s Proposed Decision (Appendix A-40,41). The Errata document allowed this declaration to stand.

In the Errata to the Presiding Members Proposed Decision (PMPD) (16- p. 28) the California Energy Commission (CEC) erred when defining themselves as the “fire code official”:

*“Fire code official” is defined as “[t]he fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative.” (24 Cal. Code Regs. § 202.) Given the Energy Commission’s exclusive jurisdiction over the permitting and regulation of thermal power plants such as the CECP, we believe the role of “fire code official” falls to us as we must both set the development standards for the project and then enforce them.*

The commission must concede that the PMPD table in Appendix A-40, 41(as noted below) defines and declares the Carlsbad Fire Department the enforcer of the California Fire Code and the National Fire Protection Association Standards. The Errata makes no issue with this table. Therefore, the Carlsbad Fire Chief stands as the “fire code official” per Energy Commission’s own documentation that has been a part of the CEC’s documentation from the start of this process.

**Worker Safety and Fire Protection Table 1 Laws, Ordinances, Regulations, and Standards (LORS)**

*Applicable Law*

*Local (or Locally Enforced)*

*Description*

*California Fire Code 2007*     *The fire code contains general provisions for fire safety, including requirements for proper storage and handling of hazardous materials and listing of the information needed by emergency response personnel. **Enforced by the Carlsbad Fire Department.***

*National Fire Protection Association standards*     *These standards provide specifications and requirements for fire safety, including the design, installation, and maintenance of fire protection equipment. **Enforced by the Carlsbad Fire Department.***

**As the “fire code official”, the CDF Chief and Fire Marshall have declared that a 50 ft. fire road in the bowl and a 25 ft. upper ring**

**road are necessary safety requirements for the CECP. Therefore the Errata violates the California Fire Code.**

The Errata states on page 15:

*24. Worker Safety, p. 4, last sentence, revise as follows:*

*Both ramps and the road around the power plant at the bottom of the “bowl” will be at least 28 feet wide at all places.*

Therefore the Errata document disregards Fire Code LORS. The Carlsbad Fire Marshall (the fire code official) requires the fire road be 50 ft. wide at all places at the bottom of the “bowl”.

With the future Interstate-5 expansion (a future project that must be considered under CEQA Law § 15130) a portion of the existing upper ring road will be lost. This 25 ft. upper ring road was requested by the Carlsbad Fire Marshall as a necessity for fire fighting safety along with the 50 ft. fire road in the CECP bowl. Errata page 17 states:

*29. Worker Safety, p. 11, revise Findings 6 – 9, as follows:*

*9. The possible future widening of the Interstate 5 freeway will not degrade fire protection in any significant way.*

The Errata again disregards Fire Code LORS. The Carlsbad Fire Chief and Fire Marshall requested a 25 ft. upper ring road for firefighting safety and this must be accommodated. The Carlsbad Fire Chief and Fire Marshall’s concerns are supported up by Escondido Fire Chief Lowry in a letter dated May 16, 2011 (Exhibit 437) page 3:

*Based on our experience at Palomar, if I were the Carlsbad Fire Chief I would have concerns if a fire were to erupt at the proposed CECP, due to its physical space, access challenges and location between the Interstate 5 freeway and the coastal railroad tracks. It is also immediately*

The California Energy Commission is required to make an override when disregarding Fire Code LORS as is happening in this project.

**Land Use 2 and Land Use 3 eliminate the Energy Commission’s argument for coastal dependence of the CECP**

Land Use 2 and 3 create a “future event” that must be considered under CEQA. That event is the shutdown of the Encina once through-cooling system (with the shut down of Units 4 and 5). Under CEQA, a proper cumulative analysis must include past, present and probable future projects. (CEQA Guidelines § 15130).

With the end of once through-cooling at Encina, the CECP argument of coastal dependence is eliminated. The CEC argues coastal dependence for the CECP based on the expanded use of the Encina’s once through-cooling unit:

*The CECP is located at the existing EPS, which is a "coastal dependent use" pursuant to the Coastal Act, inasmuch as it uses once-through cooling technology. Coastal dependent uses are encouraged to expand "within existing sites and shall be permitted reasonable long-term growth where consistent with this division" (Pub. Res. Code Section 30260). Even though the existing EPS steam boiler Units 1, 2, and 3 would be retired upon successful commercial operation of the new CECP generating units, the remaining EPS Units 4 and 5 would continue operating. The EPS remains a coastal dependent facility. In addition, because the City of Carlsbad is unable to supply reclaimed water (Exs. 193; 200, p. 4.9-14) to the project for cooling and other industrial purposes, it is necessary that CECP use its proposed ocean-water purification system. Thus, the proposed project (CECP generating units 6 and 7) is an expansion of a coastal dependent use and a coastal-dependent use in its own right. (Ex. 200, pp. 4.5-10 – 4.5-13.) PMPD, Land Use, p. 7*

Terramar contends that the CECP already violates the Public Resources Code §30101 (which defines “Coastal-dependent development or use” as “any development or use which requires a site on, or adjacent to, the sea to be able to function at all.”)

:

- as the CECP is an air cooled plant that could function anywhere
- due to the scheduled end of Encina once through cooling by 2017 ( a future event that must be considered under CEQA)

The shut down of Encina’s once through-cooling system (a future event that must be considered under CEQA) proposed in Land Use 2 and 3, eliminates the CEC’s argument for coastal dependence of the CECP.

The CECP is not coastally dependent and violates the Coastal Act. An override is necessary.

The CECP additionally violates CEQA in that with the scheduled shutdown of once through-cooling (a future event that must be considered under CEQA) they are required to go to the appropriate regulatory agencies and “assess the proper course of action to be taken (as this is a future event that must be considered under CEQA).

*If the EPS Units are in fact shut down in the future and this affects the CEC’s intake water supply, the appropriate regulatory agencies will then assess the proper course of action to be taken [retain footnote 3].*

Errata p. 21

Land Use 2 and Land Use 3 create the need for this action to be taken before the CECP can be certified. This has not been accomplished and therefore the project cannot be certified.

**Errata Land Use 2 and Land Use 3 negate CEC arguments stating that the shutdown of Encina Units 4 and 5 is uncertain. If the shutdown is uncertain then Land Use 2 and Land Use 3 offer no value to the community.**

The Errata argues that the shutdown of Encina Units 4 and 5 is an uncertain event.

Errata example, p. 22:

*The City and other intervenors have contended that the Water Board's new OTC Policy will require the shutdown of EPS units 4 and 5 at the end of 2017, and that the CECP should thus be analyzed as a "stand alone" use of ocean water that will cause some (albeit comparatively minor) impingement and entrainment of marine biota. This contention is incorrect for two reasons. First, the OTC Policy does not require the shutdown of units 4 and 5 at the end of 2017. Rather, it requires the significant reduction of entrainment and impingement effects by that date. The Policy specifically provides a performance standard to meet this requirement, allowing reduction by mechanical (e.g., such as booms or screens) or performance (e.g., reduced pumping) methods. The Commission should not speculate on how the Policy requirements will be met by EPS. In addition, the OTC Policy is very clear that the 2017 date is subject to review based on the electricity reliability needs of the State, and that it may be revised to allow operation until such time as the units are no longer necessary for San Diego's electric reliability.*

Land Use 2 and Land Use 3 (per CEQA) substantiate the shutdown of Encina as a foreseeable event with some certainty, otherwise Land Use 2 and Land Use 3 would have no benefit.

Therefore, the Errata errs by stating that the shutdown of Encina is uncertain; and then offering the shutdown and removal of Encina in Land Use 2 and Land Use 3 as a compromise.

**Errata proposed Land Use 2 and Land Use 3 do not offer extraordinary benefit as required by the South Carlsbad Redevelopment Plan.**

Land Use 2 and Land Use 3 are only a generalized plan. Unless redevelopment of the Encina site is an approved use by the South Carlsbad Redevelopment Plan, it offers no extraordinary benefit and could become a detriment to the area.

As the Carlsbad Redevelopment Attorney has testified on Feb. 1, 2010 (p.103), the CECP “adds to the blight” of the site. If the Applicant chose to redevelop the Encina site with another power plant or similar type of use, there would be no extraordinary benefit to the community and could be detrimental. Therefore, Land Use 2 and Land Use 3 offer no extraordinary benefit to the community as required by the South Carlsbad Redevelopment Plan and without express knowledge of the development great additional harm could come to the community.

Even the CEC realizes that there is no extraordinary benefit to the CECP.

*Prior to approval of project like the CECP, a finding that the project will serve an “extraordinary public purpose” is required. (Ex. 407, Ordinance No. NS-779, pp. 2-4.)PMPD, Land Use, p. 14*

*5. With the possible exception of a finding that the CECP serves an extraordinary public purpose, required under the South Carlsbad Coastal Redevelopment Area Plan, the CECP is consistent with applicable land use LORS.PMPD, Land Use, p. 25*

The CECP does not serve an extraordinary purpose and this was not corrected in the Errata Land Use 2 and Land Use 3. Therefore, the CECP violates local redevelopment LORS and an override must be made or the project must be denied.

### **Errata overstates the value of Encina retirement in Land Use 2 and Land Use 3.**

#### *PROJECT ALTERNATIVES*

*5. Alternatives, p. 2, third bulleted paragraph, revise as follows:*

- *Allows the retirement of existing EPS Units 1, 2, and 3, and assists in the eventual retirement of existing EPS Units 4 and 5;*

*Errata p. 2*

Facts regarding the the “value” of Encina

- No RMR’s exist on any of the Encina Units 1-5.
- Only a short term tolling agreement with SDG&E exist on Units 4 & 5 (per John McKinsey June 15 Commission Hearing).
- “Once through-cooling” is scheduled to end in 2017
- The South Bay plant is already shut down.
- SDG&E has offered new contracts to other sites.

It is redundant to assume that the CECP is necessary to assist in the “eventual retirement of existing EPS Units 4 & 5”.

**With the shutdown and removal of Encina per Land Use 2 and Land Use 3, the CECP would become the tallest structure in Carlsbad and not visually subordinate to Encina. Therefore, visual impacts must be reassessed per CEQA.**

*Overall visual dominance of the project would remain visually subordinate to the much larger and taller EPS structure.*

*Due to the moderate level of contrast, subordinate visual dominance, and weak view blockage, overall visual change due to structures would be low to moderate.*

*Impact Significance – In the context of the setting’s high visual sensitivity, the low to moderate level of project visual change would remain a less-than-significant visual impact.*

PMPD, Visual Resources p, 14

Visual impacts of the CECP were based on the CECP’s lower profile in contrast to the Encina larger profile. Once Encina is removed (Land Use 2, Land Use 3), the CECP will be the largest structure in the City of Carlsbad.

With Land 2 and Land 3 the visual impacts from the CECP must be evaluated as a stand alone project per CEQA (as the removal of Encina is a probable future event.) and as the largest structure in the City of Carlsbad. This has not been performed by the CEC though it was requested. Therefore, the CEC has not properly evaluated visual resources and violates LORS. Therefore, visual impacts must be reassessed or a LORS override must be made.

**The Errata disregards local LORS without making any overrides.**

*According to CEQA Guidelines [Cal. Code Regs., tit. 14, §§ 15000 et seq., Appen. G, §§ II, IX, XVII], a project results in significant land use impacts if it would:*

*Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction, or that would normally have jurisdiction, over the project. This includes, but is not limited to, a General Plan, community or specific plan, local coastal program, airport land use compatibility plan, or zoning ordinance;*

PMPD Land Use p.1

Terramar joins in and supports Power of Vision and the City of Carlsbad's position on this topic.

### **Errata Comments Conclusion**

The Errata continues to disregard LORS; including CEQA, the Coastal Act and Local LORS.. If LORS are to be disregarded then multiple overrides must be made; need and public convenience must be proven.

If this is not possible and Terramar believes it is not, then the project must be denied certification.