

STATE OF CALIFORNIA

Energy Resources Conversation
And Development Commission

In the Matter of:

The Application for Certification for the
CARLSBAD ENERGY CENTER PROJECT

Docket No. 07-AFC-6

POWER OF VISION'S BRIEF

January 10, 2012

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PREFACE

Power of Vision (POV) would like to take this opportunity to thank the Hearing Committee for reopening the Evidentiary Hearings on the Carlsbad Energy Center Project (CECP). Throughout the last four years it has become clear there are many issues still outstanding in the minds of Carlsbad citizens, whom Power of Vision represents. As evidenced by the large public turnouts for the February 2010 Evidentiary Hearings and the most recent set of hearings on December 12, 2011, the Carlsbad community is closely watching these proceedings. We realize the California Energy Commission (CEC) is given its authority to site power plants by the Warren Alquist Act and that you have the ultimate authority in siting cases. Along with the authority to ensure reliable sources of power for the state, also comes with some measure of responsibility to the local jurisdiction. (Pub Resources Code § 25003) The City of Carlsbad's elected officials, acting on behalf of its citizens, have vigorously opposed the siting of CECP on Carlsbad's coastline. The Citizens of Carlsbad have vigorously opposed the siting of the CECP by attending meetings, writing letters and signing opposition petitions (2300 signatures, exhibit 738). The Citizens of Carlsbad are not NIMBYs. Our City has long tried to work with the applicant in finding alternate locations away from the coast, even offering to help with the financing of some of the off site infrastructure.

The proceedings have identified several outstanding issues. POV will address the following in our submittal:

1. CAL ISO's December 8, 2011 slide show and December 12 testimony
2. Land Conditions 2 & 3
3. LORS as it relates to recent Carlsbad land use updates
4. South Carlsbad Redevelopment Area
5. Fire safety

6. Shut down of EPS units 1-3 uncertain
7. Conclusion

GRID RELIABILITY/CAISO REPORT

In Power of Vision's December 12, 2011 testimony, we raised the issue of the admissibility of the slides used in Mr. Spark's testimony, since they were isolated snapshots of a more complete slide presentation, were conclusions only and not supported by data or analysis that we could critique, and since they had not yet received comments from interested stakeholders or been approved as the final decision of the CAISO. Our concerns seem to have been amply justified, since on December 22, 2011 both CPUC and SDG&E made substantive comments outlining the inadequacies of the slide presentation (see the "Motion for Official Notice of CPUC comments to California ISO dated December 22, 2011" docketed on January 9, 2012).

LAND CONDITIONS 2 & 3

During the September 2011 Commission meeting, representatives of CECP asked to be relieved of the previously agreed-to Conditions Land 2 & 3 citing financial hardship. POV believes that Land 2 & 3 must remain a condition of approval. Additionally we agree with Debbie Fountain's testimony, "And we believe there needs to be -- the conditions need to -- to remain and that they probably need to be enhanced with some timing conditions, and that also additional benefits need to be provided to be able to make the extraordinary public benefit finding. (December 12, 2011 Evidentiary Hearing transcripts, page 227). We insist the public be protected from the possibility of Encina Power Station (EPS) remaining on the coast after it's retirement. The applicant, NRG, is the owner of EPS and therefore has the responsibility of

removing the units once they are no longer required and released by CAISO and the California Public Utilities Commission (CPUC). If the Commission is not able to consider the financial viability of a project, (§ **25009. Modification of need determination**) then by the same argument, it must not be concerned whether the EPS owner has the financial ability to remediate the site. Mr. Kramer, “The -- the cost of the demolition and it’s affect on the -- potential affect on the project which, of course, works back to the rate, to the ratepayers, potentially, is in our mind a very different question than whether the project in general is viable. The commission doesn’t consider, except in circumstances like override sometimes, the -- the viability of projects -- we don’t give them a financial physical, if you will -- and let the market basically decide whether they are going to make it or not.” (Page 232, December 12, 2011 Evidentiary Hearing transcripts). The CEC must protect communities from undue blighting conditions and two power plants on the coast will increase blight. The California Health and Safety Code, “Increasing, intensifying and/or furthering blight is contrary to public health and safety as explained in the California Health and Safety Code sections: § 33030 (a), § 33035 (a), (b) (c), (d), (e), and § 33037(a). The CEC is enjoined to safeguard public health and safety in the Warren Alquist Act sections: § 25216.3(a), § 25511, and § 25523(a).

IF the Committee does not impose Land 2 &3 the community has no protection from the blighting condition of an aging power plant next to a second industrial-sized power generating facility. Without the added protection of date-certain requirements, and additional conditions that guarantee removal, the citizens are subject to visual impairment of two power plants in our front yard and the inability to redevelopment the site for public use.

LORS

Power of Vision heard no testimony or argument at the December 12, 2011 meeting that CECP is exempt from recent changes to the Carlsbad General Plan, Zone code, Precise Development Plan, and Encina Specific Plan that would prohibit coastal power plants. Under oath Mr. Valentino, applicant's representative, in an exchange with Mr. Ball, city of Carlsbad (December 12, 2011 Evidentiary Hearing transcript, page 255):

MR. BALL: "And that would have been the question that we would ask the witnesses, have you applied for a redevelopment permit?"

MR. VALENTINO: To my knowledge, no."

Because the applicant did not submit documents with the City of Carlsbad, as required by City ordinance, they are not in a position to claim recent land use changes do not affect them as changes in land use reasonably occur throughout a city's history. There is an abundance of case law that speaks to the applicability of Carlsbad land use changes. Power of Vision will rely on the legal expertise of others to make this point. As a citizens' group, our role here to present the viewpoint of residents and their reliance the Carlsbad City Council for protection from land use applications that are detrimental to the community's interests. Recent City of Carlsbad land uses updates reflect the will and desire of residents to render the CECP inconsistent with General Plan, Zoning Ordinance and related documents.

Furthermore, the Warren Alquist Act (§ 25003) states, "**Legislative finding; consideration of state, regional and local plans:** The Legislature further finds and declares that in planning for future electrical generating and related transmission facilities state, regional, and local plans for land use, urban expansion, transportation systems, environmental protection, and economic development should be considered." It is therefore, necessary, to give the local

land use ordinances of Carlsbad due deference and declare the CECP does not, cannot meet LORS.

UNCERTAINTY OF CPUC DECOMMISSIONING UNITS 1-3

It came to light during the December 12 hearings that there is no certainty to the CPUC decommissioning EPS units 1-3 that are required for the permitting and construction of CECP. ‘But the reality is that they have to get approval by the CPUC to shut down a unit in California. All operators do. And so 1, 2 and 3 -- and that is a risk issue that -- that they have to be approved to be shut down before they can be shut down. And that’s a risk a few other projects in the recent year have dealt with before they could start construction.’ (John McKinsey page 236, Dec. 12, 2011 Evidentiary hearing transcript)

And again, “But we have very little history of it and it is a risk issue that all project developers that are depending on the shutdown of other units, for whatever reason, whether it’s air credits or something else now have to grapple with in terms of -- of getting that approval before they can shut them down. (John McKinsey page 23, Dec. 12, 2011 evidentiary hearing transcript). This uncertainty of the retirement of Units 1-3, which are needed for the construction of CECP, are again, another example of an application fraught with problems and unresolved issues.

SOUTH CARLSBAD COASTAL REDEVELOPMENT PLAN (SCCRP)

The California Legislature (ABX1 26) abolished California redevelopment agencies to recapture funds that were reallocated to Redevelopment Agencies through tax increment. However, the changes in the law did not dissolve the land use requirements of the redevelopment agencies and allowed successor agencies to be named (ABX1 27). The Carlsbad City Council

has adopted an Ordinance # CS-138 on April 26, 2011 declaring itself to be the "successor agency". In the absence of new land use requirements for the SCCRA, the existing rules must still apply. Therefore, the extraordinary public benefit rule, as well as removing blighting conditions is still in force and CECP must comply with the rules of the SCCRP.

FIRE SAFETY

This topic has been extensively covered in previous hearings by the CEC. POV would like to bring up this subject, again, as an issue that has not been fully resolved and it critical to the citizens. In the PMPD Errata, page 16, the CEC stated its assertion, "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. While the opinions of the local fire officials who will provide the fire protection services are an important consideration, they are not dispositive."

As citizens we must have a measure of security on who will provide the relevant fire safety for the CECP. Will that be the CEC? Will that be the CECP itself? Since its proximity to residents, 1600 feet on the north and south, we have grave concerns for our safety.

CONCLUSION

It is time to use some common sense and logic and DENY this application once and for all, so that it does not become another in the long list of projects that have been approved and not built. Power of Vision does not believe an override should be issued because this project should

be denied outright. It clearly does not meet the needs of the local utility, (SDG&E). It clearly does not meet the needs of the residents of Carlsbad or the North County region that wish to see their beaches free and clear of industrial-sized blight. The record of the two Evidentiary Hearings, thousands of pages of documents have made clear this project is fraught with issues inconsistent with the goals of the City of Carlsbad, the South Carlsbad Coastal Redevelopment Plan, the California Coastal Act, fire safety regulations and California Energy Commission Legislative findings. Several of these issues are still outstanding. We respect the time, patience and energy of the Hearing Committee and respectfully ask you to issue a new PMPD denying the CECP application for certification.

“...have the self-honesty to admit when we are wrong and the courage to change”. Quote of Tim Cook in Walter Isaacson’s book, “Steve Jobs”.

January 10, 2011



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

**Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 11/29/2011)**

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DECLARATION OF SERVICE

I, Julie Baker, declare that on January 10, 2012 I served and filed copies of the attached Power of Vision's **Brief**. 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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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

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