



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

DOCKET

07-AFC-6

DATE MAY 11 2009

RECD. MAY 11 2009

**COMMITTEE RULING ON INTERVENOR CITY OF CARLSBAD'S
 PETITION TO COMPEL DATA RESPONSES**

On March 23, 2009, Intervenor City of Carlsbad (City) issued ten Data Requests to Carlsbad Energy Center, LLC (the Applicant). On April 9, 2009, the Applicant objected to the Data Requests. City responded on April 16, 2009, by filing a *Petition to Compel Response to Data Requests* (Petition) for Data Request 148. Following briefing, the Carlsbad AFC Committee adopts the following rulings on the Petition.

The Petition comes before us prior to the presentation of any evidence. Nothing in these rulings is intended to comment on the merits of the Application for Certification (AFC) or the legal and procedural issues involved in our review, such as the scope of the environmental impact analysis of visual impacts. Those issues will be discussed and decided during the evidentiary hearings.

In our December 26, 2008, *Committee Ruling on Intervenor Center for Biological Diversity's Petition to Compel Data Responses*, we wrote:

“The provision of “information” by the Applicant or any other party includes data and other objective information available to it. The answering party is not, however, required to perform research or analysis on behalf of the requesting party. The line between discoverable data and undiscoverable analysis and research is dependent on the particulars of a request and cannot be drawn with precision.

In evaluating the requests, we consider the following general factors:

- The relevance of the information.
- Is the information available to the Applicant or from some other source, or has it already been provided in some form?
- Is the request for data, analysis, or research?

- The burden on the Applicant to provide the data.”

In Data Request 148, the City requests that the Applicant

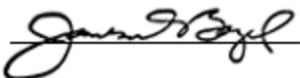
“Provide or prepare, if necessary, visual simulations of the CECP, including the proposed switchyard adjacent to the West Hotel, which incorporates the widening of I-5, the double tracking of the LOSSAN rail corridor, the Coastal Rail Trail and the Carlsbad/Vista Sewer Interceptor. Include safety features, such as barrier walls, related to I-5 and the Coastal Rail Trail.”

Here while the visual impacts of the proposed project are at issue and the requested simulations may be relevant to that analysis, the preparation of the simulations is analysis rather than the provision of information. The Applicant is no better able to prepare them than is the City. The information necessary to prepare the simulations, speculative or not, is available to the Applicant and the City. The Applicant should not be compelled to prepare the City’s analysis for it, though nothing precludes the Applicant from voluntarily doing so.

Because the request seeks analysis, not information, we need not decide whether the simulations are helpful or necessary for our deliberations. The City is free to make its arguments and offer evidence on the subject during the evidentiary hearings.

IT IS THEREFORE ORDERED that the Petition is **Denied**.

Dated May 11, 2009, at Sacramento, California.



JAMES D. BOYD
Vice Chair and Presiding Member
Carlsbad AFC Committee



KAREN DOUGLAS
Chairman and Associate Member
Carlsbad AFC Committee



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 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, Maggie Read, declare that on May 11, 2009, I served and filed copies of the attached Committee Ruling on Intervenor City of Carlsbad's Petition to Compel Data Responses, Revised Committee Scheduling Order and new Proof of Service list. 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:

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:

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

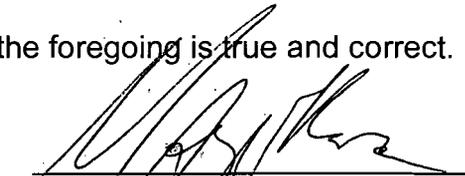
OR

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



MAGGIE READ