The attached revised Order was provided to the Energy Commissioners and parties present for the Commission's Hearing on the Carlsbad Energy Center Project (07-AFC-06) at approximately 6 pm on May 31, 2012. It was also e-mailed to the Public Adviser for distribution to the parties who were participating by telephone.

Note that this is NOT the final adopted version of the order; the Commissioners made changes as part of the motion to approve the Order.

Paul Kramer
Chief Hearing Adviser

June 1, 2012

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-06

Order No. 12-0531-06

(REVISED PROPOSED) COMMISSION ADOPTION ORDER

This Commission Order adopts the Commission Decision on the Carlsbad Energy Center Project (CECP) Application for Certification. The Commission Decision consists of the Revised Presiding Member's Proposed Decision (RPMPD) docketed on March 28, 2012, as modified by the Committee Revisions to the RPMPD docketed on May 16, 2012, the Errata docketed on May 31, 2012 and the additional changes made during the May 31, 2012 Business Meeting described on Attachment A to this Order. The Commission Decision is based upon the evidentiary record of these proceedings and considers the comments received at the May 31, 2012, business meeting. The Commission Decision contains a summary of the proceedings, the evidence presented, and the rationale for the findings reached and conditions imposed.

This Order incorporates by reference the text, Conditions of Certification, Compliance Verifications, and Appendices contained in the Commission Decision. The requirements contained in the Commission Decision ensure that the proposed facility will be designed, sited, and operated in a manner to protect environmental quality, to assure public health and safety, and to operate in a safe and reliable manner.

FINDINGS

The Commission hereby adopts the following findings in addition to those contained in the Commission Decision:

1. The Carlsbad Energy Center Project will provide a degree of economic benefits and electricity reliability to the local area.

2. The Conditions of Certification contained in the Commission Decision, if implemented by the project owner, ensure that the project will be designed, sited, and operated in conformity with applicable local, regional, state, and federal laws, ordinances, regulations, and standards, including applicable public health and safety standards, and air and water quality standards except for the City of Carlsbad's land use regulations and standards, the California Coastal Act, and

the State Fire Code as described in the Override Findings section of the Decision.

3. Implementation of the Conditions of Certification contained in the Commission Decision will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility. The Conditions of Certification also assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative environmental impacts except for the inconsistencies with the City of Carlsbad's land use regulations and standards, and the California Coastal Act, as described in the Override Findings section of the Decision.

4. The project's inconsistencies with City of Carlsbad LORS described above, with the exception of the failure to provide "extraordinary purpose" under the Redevelopment Area Plan, result from recent amendments to the City's plans and ordinances, enacted at least in part to prevent approval of the CECP. Until those amendments were enacted, the CECP was consistent with the City's plans and ordinances.

5. The CECP facility is required for public convenience and necessity. There are not more prudent and feasible means of achieving the public convenience and necessity.

6. The CECP's benefits outweigh the significant environmental impacts identified in the Commission Decision.

7. Existing governmental land use restrictions are sufficient to adequately control population density in the area surrounding the facility and may be reasonably expected to ensure public health and safety.

8. The project is subject to Fish and Game Code section 711.4 and the project owner must therefore pay a nine hundred ninety two dollars and fifty cents ($992.50) fee to the California Department of Fish and Game.

9. No feasible alternatives to the project would reduce or eliminate any significant environmental impacts of the project.

10. The evidence does not establish the existence of any environmentally superior alternative site.

11. An environmental justice screening analysis was conducted and the project, as mitigated, will not have a disproportionate impact on low-income or minority populations.

12. The Commission Decision contains a discussion of the public benefits of the project as required by Public Resources Code section 25523(h).

~~12.~~13. Having considered the newly adopted Carlsbad Ordinance No. CS-184 and related staff report, of which we take official notice, and the comments made during the May 31, 2012 Business Meeting, we find that the project is in conformity with the ordinance and therefore no LORS override is necessary. We further find that the adoption of the Ordinance is not significant new information under CEQA because it does result in a new significant environmental impact from the project, a substantial increase in the severity of an environmental impact from the project, or create new feasible project alternatives or mitigation measures not previously analyzed because the ordinance is consistent with the RPMPD.

~~13.~~14. The Commission Decision contains measures to ensure that the planned, temporary, or unexpected closure of the project will occur in conformance with applicable laws, ordinances, regulations, and standards.

~~14.~~15. The proceedings leading to the Commission Decision have been conducted in conformity with the applicable provisions of Commission regulations governing the consideration of an Application for Certification and thereby meet the requirements of Public Resources Code sections 21000 et seq. and 25500 et seq.

ORDER

Therefore, the Commission **ORDERS** the following:

1. The Revised Presiding Member's Proposed Decision (RPMPD) docketed on March 28, 2012, as modified by the Committee Revisions to the RPMPD docketed on May 16, 2012, the Errata docketed on May 31, 2012, and the additional changes made during the May 31, 2012 Business Meeting described on Attachment A to this Order, is hereby adopted as the Commission Decision and incorporated by reference into this Order.

2. The Application for Certification of the Carlsbad Energy Center Project as described in the Commission Decision is hereby approved and a certificate to construct and operate the project is hereby granted.

3. The approval of the Application for Certification is subject to the timely performance of the Conditions of Certification and Compliance Verifications. The Conditions and Compliance Verifications are integrated with this Order and are not severable therefrom. While the project owner may delegate the performance

of a Condition or Verification, the duty to ensure adequate performance of a Condition or Verification may not be delegated.

4. This Order is adopted, issued, effective, and final on the date this Order is docketed.

5. Reconsideration of this Order is governed by Public Resources Code, section 25530.

6. Judicial review of this Order is governed by Public Resources Code, section 25531.

7. The Commission hereby adopts the Conditions of Certification, Compliance Verifications, and associated dispute resolution procedures set forth in the Commission Decision as its mitigation monitoring program required by Public Resources Code section 25532. All Conditions take effect immediately upon adoption and apply to all construction and site preparation activities including, but not limited to, ground disturbance, site preparation, and permanent structure construction.

8. This Order licenses the project owner to commence construction on the project within five years of the date this Order is final. Subject to the provisions of California Code of Regulations, title 20, section 1720.3, this license expires by operation of law when the project's start-of-construction deadline passes with no construction.

9. The project owner shall provide the Executive Director a check in the amount of nine hundred ninety two dollars and fifty cents ($992.50) payable to the California Department of Fish and Game.

9. The Executive Director of the Commission shall transmit a Notice of Decision and appropriate accompanying documents, including the above Department of Fish and Game fee, as provided by Public Resources Code section 25537, California Code of Regulations, title 20, section 1768, and Fish and Game Code section 711.4.

10. Pursuant to Public Resources Code section 25523(d)(1), the Executive Director of the Commission shall notify the appropriate agencies of the Commission's adoption of findings pursuant to Public Resources Code section 25525.

11. The Hearing Office shall incorporate the RPMPD and various revision documents described above, into a single document. Publication of that compilation shall not affect the adoption, effective, issuance, or final dates of this Order established in paragraph 4, above.

12. The Application for Certification docket file for this proceeding shall be closed effective 30 days after this Order is final, unless a timely petition is filed pursuant to Public Resources Code section 25530.

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CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on May 31, 2012.

AYE:
NAY:
ABSENT:
ABSTAIN:

Dated: May 31, 2012, at Sacramento, California.

_____
Harriet Kallemeyn
Secretariat
California Energy Commission

ATTACHMENT A
ADDITIONAL CHANGES TO REVISED PMPD ADOPTED AT
MAY 31, 2012 ENERGY COMMISSION BUSINESS MEETING

~~[to be provided . . .]~~Modify the following Air Quality section paragraph, added by the Revisions to the RPMPD, as follows:

Although the issue is yet unsettled, and there is no final determination of applicability, it is possible if not likely that CECP will require a PSD permit for GHG emissions to satisfy new federal requirements for such. (12/12/11 RT. p. 190.) The PSD is a "preconstruction permit," in that a project may not be constructed until the permit is obtained and becomes final. (40 C.F.R. § 52.21(b)(43)[2011].) The San Diego Air Pollution Control District (APCD), the agency that would normally issue any permit absent Energy Commission's preemptive statute, has ~~not~~ adopted requirements for its State Implementation Plan regarding federal PSD provisions **but has not yet applied for, nor obtained approval to include those provisions in the SIP**. Because it has not done so, federal requirements are implemented through a separate federal permit, issued by the U.S. Environmental Protection Agency (EPA). For CECP, EPA Region 9 would grant the federal permit unless such authority is delegated to the APCD; either way, the permit remains a separate federal permit. (40 C.F.R. § 124.41 [2011]; Greater Detroit Res. Recovery Authority v. U.S.E.P.A. (6th Cir. 1990) 916 F.2d 317, 320-321 ["Permits issued under such a delegation are considered to be EPA-issued permits."]

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Modify Condition SOCIO-1 as follows:

The project owner shall prepare a fee schedule detailing fees to b epaid as mandated by law and related to the development of the project. Such fees may include school impact fees or other local jurisdictional development fees.

Verification: At least 30 days prior to the start of construction, the project owner shall provide the schedule to the City of Carlsbad for review and comment and to the CPM for approval.