

## DOCKETED

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VIA E-FILING

Carlsbad Energy Center Project (07-AFC-6C)  
Chairman Robert B. Weisenmiller, Ph.D.  
Siting, Transmission and Environmental Protection Division  
California Energy Commission  
1516 Ninth Street, MS-15  
Sacramento, CA 95814-5512

Re: Carlsbad Energy Center Project, 07-AFC-6C  
Appropriate to allow parallel and separate PTR and PTA

Dear Chairman Weisenmiller:

The Carlsbad Energy Center Project (“**CECP**”), 07-AFC-6C, was approved by the California Energy Commission (“**CEC**”) in May of 2012. On April 29, 2014 the Project Owner, Carlsbad Energy Center LLC, filed a Petition to Remove (“**PTR**”) that seeks CEC Staff concurrence that removing three additional Fuel Oil Storage Tanks (“**FOSTs**”) at the project site would be in keeping with the environmental scope of the Final Decision on CECP and be in furtherance of the existing approved project. On May 2, 2014 the Project Owner filed a Petition to Amend (“**PTA**”) CECP to conform the project to local, regional and state energy needs. Project Owner seeks staff approval of the PTR separate from Commission approval of the PTA. Project Owner seeks approval of the PTR as a necessary, required, and appropriate inclusion in the currently approved CECP.

Power of Vision (“**PoV**”), an intervenor in the original CECP Application For Certification (“**AFC**”) process, has filed a comment suggesting that the PTR and PTA should be treated together as a single PTA. One reason cited by Power of Vision was that the removal of FOST No. 4 in the PTR was “clearly” for the “purpose” of the amended CECP proposed by the PTA (the three FOSTs that are the subjects of the PTR are Nos. 1, 2 and 4). This is not correct. Further, the filing of a PTR and PTA so close together in time is not inherently defective, despite suggestions to the contrary by PoV. Instead, it is both important and appropriate that the PTR be treated separately from the PTA.

**Appropriate and Important to Treat PTR Separate from PTA**

Approval of the PTR will further CECP, regardless of whether the version of CECP that gets built is the currently approved version or the amended version sought in the PTA. The addition of laydown areas in the footprint of FOST Nos. 1, 2, and 4 will greatly assist the safe and

efficient construction of CECP, regardless of its configuration. Further, removing FOST Nos. 1, 2, and 4 during the removal of FOST Nos. 5 and 6, the removal of which is explicitly authorized by the decision approving the CECP AFC, reduces the environmental effects that would otherwise be endured by conducting a separate mobilization at a later time. By completing approval of the PTR now, Project Owner will be able to mobilize later this year, after making all necessary compliance filings, and begin removal of all FOST's. This outcome provides substantial environmental benefits and also provides substantial support for the CECP project schedule, which is intended to provide the needed type of generation in advance of Encina Power Station's ("EPS") December 31, 2017 once-through cooling ("OTC") deadline.

There is also no reason under the Warren Alquist Act, the California Environmental Quality Act ("CEQA"), or other applicable law, why the removal of FOST Nos. 1, 2 and 4 cannot be approved or allowed separately from modifications to the design of the project. In fact, there is precedent for multiple PTAs in CEC practice, and there is good reason to allow each approval process to take the appropriate level of scrutiny and length that befits it. Here the proposed dual processes are not even dual PTAs, but instead a PTA and a PTR.

### **Parallel PTR-PTA Processes Does Not Create Piecemealing**

While there is a general requirement under CEQA that the full project be considered in order to prevent so-called "piecemealing" of environmental consequences, the parallel PTR-PTA approach does not create such a situation. Instead, the PTR proposes additional demolition for the currently approved project. Its approval is sought regardless of whether or not the CEC approves the design changes of the PTA. The PTA, on the other hand, includes in its environmental evaluation, consideration of the removal of FOST Nos. 1, 2 and 4. Thus, the PTR and PTA are compatible but stand separately, independent of one another.

The piecemealing issues arises under CEQA Guideline Section 15003, which holds that: "...[t]he lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect." (CEQA Guidelines, §15003 (h).) This rule is designed to prevent an agency from "chopping a large project into many little ones-each with a minimal potential impact on the environment-[but] which cumulatively may have disastrous consequences." (Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 283-284.)


Here, there is no separate or future aspect of the project not being considered if CEC Staff were to agree to approve the PTR. The PTR requests CEC Staff to allow removal of three additional FOSTs as part of the project, because the environmental envelope would remain the same and because allowing such FOST removal provides positive benefits environmentally and to the community. Removal of the additional FOSTs does not rise to the level of being a change that requires treatment as a project change requiring Commission approval as a PTA.

Further, the Project Owner seeks immediate authorization in the PTR, and the allowed additional FOST removal will be utilized in the project regardless of whether the design changes requested in the PTA are approved.

For the above reasons, I respectfully urge the CEC to allow the PTR for CECP to proceed to its separate consideration by CEC staff, while the PTA is processed as a formal proposed project

change to be approved, ultimately, by the full Commission. Both the PTR and the PTA are in the interests of the local Carlsbad community, the region and California.

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By:   
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