

## DOCKETED

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**STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission**

**In the Matter of:**

**Docket No. 07-AFC-06C**

**Petition to Remove Obsolete Facilities  
to Support Construction of the Carlsbad  
Energy Center Project**

**and**

**Petition to Amend the Carlsbad Energy  
Center Project**

**CARLSBAD ENERGY CENTER LLC'S  
RESPONSE TO CALIFORNIA ENERGY COMMISSION  
STAFF MOTION TO CONSOLIDATE PROCEEDINGS**

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**I. INTRODUCTION.**

In May 2012, the California Energy Commission (the “**Commission**”) approved the construction and operation of the Carlsbad Energy Center Project (07-AFC-06) (“**CECP**” or the “**Project**”) in its Commission Decision on CECP (the “**Final Decision**”). Among other actions, the Final Decision authorized Carlsbad Energy Center LLC (“**Project Owner**”) to remove three (3) fuel oil storage tanks (“**FOSTs**”) situated in the Project footprint (Tanks 5, 6, and 7, and collectively, the “**Original FOSTs**”). During Project Owner’s subsequent preparation to construct CECP, Project Owner determined that removal of three (3) additional FOSTS from the Project location (collectively, the “**Additional FOSTs**,” and individually, “**FOST 1**,” “**FOST 2**,” or “**FOST 4**,” respectively) in advance of the CECP construction would streamline construction of the overall Project. Early removal of all six (6) FOSTs would improve site access, increase potential laydown and parking areas at the site, allow Project Owner to improve environmental conditions at the site and satisfy its commitment to the City of Carlsbad to remove these visual obstructions as early as possible. Ideally, this removal would occur in advance of any other site preparation actions. Consequently, on April 29, 2014, Project Owner filed with the Commission a Petition to Remove Obsolete Facilities to Support Construction of the Carlsbad Energy Center Project (the “**PTR**”). In the PTR, Project Owner requested Energy Commission consent to remove the Additional FOSTs simultaneously with the Original FOSTs.

Updates in generation technology and the Southern California electrical system's increased demand for reliable power sources since the Commission issued its Final Decision prompted Project Owner to redesign CECP. On May 2, 2014, Project Owner filed its Petition to Amend (the "**PTA**") the Carlsbad Energy Center Project. The PTA proposed to replace certain Project components with upgraded equipment, and analyzed the impact of such Project revisions on the environment, existing conditions of certification for the Project, and laws, ordinances, regulations and standards ("**LORS**").

On July 10, 2014, Commission staff ("**Staff**") filed its Motion to Consolidate Proceedings as Commission TN 202676 (the "**Motion**"), in which it encouraged the Commission to evaluate Project Owner's proposals in both the PTR and PTA as if they were submitted under a single petition to amend the Final Decision. Staff's Motion primarily encouraged the Commission to consolidate the PTR and the PTA to prevent Staff confusion that could delay approval of the petitions and cause "uncertainty with the broader public." Secondly, Staff cited the California Environmental Quality Act requirement that elements of one "project" should not be subject to separate consideration. Project Owner considers both of these concerns unwarranted for the reasons discussed below, and urges the Commission to evaluate the PTR separately from the PTA.

## **II. RESPONSES TO STAFF'S MOTION.**

Evidence in the Commission's record for CECP, including the PTR, the PTA and Project Owner's July 11, 2014 Pre-Hearing Brief In Support of the Commission Processing the Petition to Remove Separately from the Petition to Amend the Carlsbad Energy Center Project (Commission TN 202683; the "**Brief**"), supports independent consideration of these petitions. Contrary to the implication made at the end of Staff's Motion, State law does not require consolidation of these petitions.

As discussed in detail in the Brief, the Additional FOST removals will benefit whichever version of CECP is built. Therefore, the Project modifications proposed in the PTR deserve independent consideration from those proposed in the PTA.

Furthermore, Project Owner would have more flexibility at the Project site during construction if the Commission approves the PTR modifications separately from the PTA modifications. The PTR is subject to a more streamlined, simpler review process than the PTA [see Brief, Paragraph II(D)(2)]. If the Commission approves the PTR amendment, Project Owner could remove the Additional FOSTs concurrently with the Original FOSTs. Consolidating the FOST removals benefits the environment, allows Project Owner to honor its commitment to the City of Carlsbad to remove all FOSTs as early as possible, visually enhances the coastline, reduces the FOST removal timeline, enables faster mobilization for CECP construction, and improves access to and use of the site during Project construction.

### **A. Petition Consolidation Is Not Necessary To Prevent Confusion.**

Project Owner's expectation that these petitions may and can be evaluated independently by Staff and the Commission is rooted in, among other things, the Commission's broad

procedural authority, Commission precedent, the fundamental differences between the PTR and PTA proposals, and the requisite Staff evaluation of each petition.

Chairman Weisenmiller is empowered to dispose of procedural requests [Title 20 Cal. Code of Regulations §1203(c)], and the Commission may sever “part of any notice or application proceeding, if reasonably necessary to ensure the complete, fair, or timely consideration of any siting proposal” (Title 20 Cal. Code of Regulations §1719). Therefore, the Committee and the Commission’s chairman are empowered to grant Project Owner’s request to approve these petitions independently. For other projects under the Commission’s jurisdiction, the Commission has conducted parallel approval proceedings on petitions to modify different aspects of those projects. [See Brief, Paragraph II(C); see also Commission Dockets for El Segundo Energy Center project, the Blythe Transmission Line project, the Colusa Generating Station project, and the Sutter Energy Center project]. Project Owner has not located documentation in those project dockets that would indicate that the dual processing of those modifications confused Staff or delayed project approval.

Furthermore, the Project modification proposed in the PTR is the type of project inclusion typically approved by Staff alone, as the PTR does not propose modifications to the design, operation or performance requirements of the approved Project. [See California Code of Regulations §1769(a)(2); see also Brief, Paragraph II(D)(1).] This statute does require Commission consent to and public review of redesigned projects, however. [See CCR §1769(a).] Accordingly, the redesigned Project proposed in the PTA warrants a more thorough Staff and Commission evaluation than the supplemental FOST removals proposed in the PTR.

The PTR evaluated the cumulative impact of incorporating three (3) additional FOST demolitions into the Project. That analysis concluded that consolidating the six (6) FOST removals would not (1) significantly impact the environment, (2) require revisions to the Project’s conditions of certification, or (3) violate applicable LORS. [Brief, Paragraph II(D)(1).] If Staff and/or the Committee renders the prompt approval warranted by the PTR analysis, then the issue of consolidation would be moot. Thereafter, all parties could focus their attention on the PTA. The Project, the environment and the public benefit from separate consideration of these petitions and an early, thoughtful decision on the PTR. Therefore, the PTR modifications should not be unreasonably delayed by rolling them into the PTA.

### **B. CEQA’s Piecemealing Rule Is Inapplicable To This Situation.**

The penultimate sentence of Staff’s Motion incorrectly asserts that the California Environmental Quality Act (“CEQA”) requires consolidated review of the PTR and PTA. When weighing the environmental impact of an action, a lead agency must “consider the whole of an action, not simply its constituent parts.” [CEQA Guidelines §15003(h).] This rule prevents agencies from piecemeal review of multiple actions that collectively comprise a “project” under CEQA, “each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.” *Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 283-84.

Under CEQA, the licensed CECP is the project. The PTR and the PTA each propose different modifications to the approved project. Separate consideration of each petition would not constitute “piecemealing” because the analyses submitted with each petition considered the cumulative impacts of the respective modifications in light of the entire, licensed Project. [(See *Bozung* 13 Cal.3d 263, 283-84; *Citizens Assoc. for Sensible Development of Bishop Area v. County of Inyo et al.* (4th Dist. 1985) 172 Cal.App.3d 151, 166.)] Incorporating the Additional FOST removals would have an insignificant cumulative environmental impact on the Project, and would allow the Project to continue to comply with all applicable LORS and with the conditions of certification imposed in the Final Decision. Likewise, in the PTA, Project Owner determined that “all direct, indirect and cumulative impacts of the [amended] CECP on health, safety, and the environment will remain less than significant.... Impacts are actually reduced in many disciplines, and compliance with LORS is improved.” (PTA, page 1-6.) This analysis enables Staff and the Commission to evaluate the environmental significance of each version of the entire, revised Project, as mandated by CEQA. Therefore, the Commission need not subject the PTR and the PTA to a consolidated proceeding.

### **III. CONCLUSION.**

Project Owner respectfully requests that the Commission issue an order providing for independent review of these two (2) petitions, as Staff confusion and public uncertainty are not inevitable outcomes of a parallel review procedure. An assertion that this type of procedural process would confuse staff discredits the intellect of individual Staff members. Project Owner holds Commission Staff in high regard, and is confident in Staff’s ability to distinguish between the quick, thoughtful review warranted by the PTR and the methodical, in-depth review merited by the PTA. Moreover, in the time it will take the Committee to resolve the procedural issue at hand, Staff and/or the Committee could have evaluated the PTR on its merits and disposed of it; thereby allowing Staff to focus on its evaluation of the PTA.

In each of the PTR and the PTA, Project Owner assessed the incremental, cumulative environmental impacts of the proposed project modifications in light of the whole Project, as applicable. Project Owner also determined the impacts of the respective modifications on Project LORS and conditions of certification. This analysis will allow the Commission to remain in compliance with CEQA while evaluating each petition on its individual merits under CEQA.

Project Owner urges the Committee to consider the PTR and the PTA separately.