

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 Amend the)
Carlsbad Energy Center Project) **STAFF’S OBJECTIONS AND RESPONSES**
) **TO ROBERT SIMPSON’S DATA REQUESTS**

On October 29, 2014, Intervenor Robert Simpson filed *Carlsbad Energy Center Project Amendment (07-AFC-6C) Data Requests, Set 1 (Data Requests)* addressed to the Petitioner. However, Mr. Simpson attached a “Clarification of Data Requests” in which he states, “First all of my Data requests should also be construed as public comment and public records requests. Second, all data requests are to the applicant and staff.” California Energy Commission Staff (Staff) objects generally to Mr. Simpson’s preamble as it is vague, ambiguous and over burdensome. Staff has considered Mr. Simpson’s Data Requests as directed to Staff and the Petitioner, and also as a Public Record Act request to the extent he requests a public record as defined by statute. The objective of Data Requests is to request information and to the extent that Mr. Simpson wishes to make public comment, he should do so in the appropriate manner in the appropriate forum.

Under the Public Records Act, Government Code section 6250 et seq., a public record “includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics...” (Gov. Code. §6252(e).) The Public Records Act applies to existing documents only. Furthermore, Government Code section 6253(b) states:

- b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

Therefore, for the Data Requests that request a copy of an identifiable record or records that are reasonably described, even if they exceed the scope of Mr. Simpson's limited intervention (Air Quality, Greenhouse Gas, and Public Health), the Energy Commission will consider those a Public Records Act request and will respond in a separate communication.

General Objections

California Code of Regulations, title 20, section 1716(d) states:

Any party may request from a party other than the applicant information which is reasonably available to the responding party and cannot otherwise be readily obtained, and which is relevant to the proceeding or reasonably necessary to make any decision on the notice or application. All such requests shall state the reasons for the request.

Staff generally objects to Mr. Simpson's data requests in that the information he seeks is not reasonably available to Staff. Staff has not completed its analysis as it will be publishing its Preliminary Staff Assessment (PSA) in mid-December. In some instances, Mr. Simpson can readily obtain the information on the Energy Commission's website or by reviewing the Carlsbad Energy Center Project Decision or the Petition to Amend. In addition, many of the data requests are not relevant to this proceeding, or reasonably necessary to make any decision on the petitions. Furthermore, many of Mr. Simpson's requests exceed the scope of his limited intervention. Staff responds or objects specifically to each Data Request below.

Data Requests Nos.1-5:

Background: The amendment application Page 5.1-30 and page 5.1-68 indicates that a Prevention of Significant Deterioration ("PSD") permit will be required for greenhouse gas emissions.

1. Please provide a copy of the PSD permit application submitted to Region 9 for approval of the PSD permit.
2. If a PSD application has not been submitted to the EPA please indicate why it has not and when the applicant intends to submit one.
3. Please provide the project owner's schedule for acquisition of the PSD permit.
4. Please provide all past and future copies of correspondence between the

EPA and the project proponent related to this particular PSD permit. This is an ongoing data request.

5. Please provide electronic copies or transcripts of any written or oral correspondence with the CEC staff or CEC Commissioners related to the PSD permit.

Staff's Response: Staff objects to these requests because they are not relevant to the proceeding or reasonably necessary to make any decision on the notice or application. Without waiving these objections, the U.S. Environmental Protection Agency, Region 9, and the San Diego County Air Pollution Control District (District) will not be requiring a PSD permit for Greenhouse Gas emissions (GHG), therefore no permit application is necessary.

Data Request No. 6:

Background: The applicant's agreement with the City of Carlsbad provides for a monetary payment if the existing Encina Project is required to operate at the same time the amended Carlsbad Peaker project is operating.

6. Please provide an air quality modeling analysis showing the impact of the 965 MW Encina Power Station operating at the same time as the amended 632 MW Carlsbad project.

Staff's Response: Staff objects to the extent that Mr. Simpson can reasonably obtain this information from the Petition to Amend. Furthermore, Staff objects to these data requests in that the information is not reasonably available to Staff, not relevant to the proceeding or reasonably necessary to make any decision on the amendment. Without waiving these objections: Concurrent commercial operation will not be allowed. Concurrent operation will be limited to the 4-month initial commissioning of CECP and the facility-wide 12-month emission limits will apply during the period that includes initial commissioning. The Petitioner provided a modeling analysis for the initial commissioning period including EPS operation. (Please see TN 202627 with the results of the analysis summarized in the Petition to Amend TN 202287-2 and -3.) Additionally, the District will provide the results of a separate criteria pollutant modeling analysis in the Preliminary Determination of Compliance (PDOC.)

Data Request No. 7:

7. Please provide a health risk assessment assuming that both the Encina Project and the 632 MW Amended Carlsbad project are operating simultaneously.

Staff's Response: Staff objects to the extent that Mr. Simpson can reasonably obtain this information from the Petition to Amend. Furthermore, Staff objects to these data requests in that the information is not reasonably available to Staff, not relevant to the proceeding or reasonably necessary to make any decision on the amendment. Without waiving these objections: The Petitioner provided an acute commissioning period and annual commissioning period Health Risk Assessment (HRA) modeling analysis (see TN 202627), with the results of the analysis summarized in the PTA TN 202287-2 and -3. Staff and the District will provide additional separate HRA analysis in the PSA and the PDOC documents. As noted above in the Response to DR 6, EPS and the amended CECP will not operate concurrently beyond the CECP initial commissioning period. Therefore, no additional HRA modeling analysis for concurrent CECP and EPS operation, beyond those performed and being performed for the 4-month initial commissioning period is warranted.

Data Request No. 8:

8. Please provide a nitrogen deposition analysis assuming both projects continue to operate.

Staff's Response: Staff objects to the extent that Mr. Simpson can reasonably obtain this information from the Petition to Amend. Furthermore, Staff objects to these data requests in that the information is not reasonably available to Staff, not relevant to the proceeding or reasonably necessary to make any decision on the amendment. Without waiving these objections, both projects will not continue to operate as noted above in the response to DR 6, so nitrogen deposition modeling for both facilities continuing operation is not warranted.

Data Request No. 9:

Background: It is likely that the project may be operated continuously or intermittently on natural gas derived from imported liquefied natural gas (“LNG”).

9. Please provide an air quality analysis based on the project utilizing imported LNG.

Staff’s Response: Staff objects to the extent that Mr. Simpson can reasonably obtain this information from the Carlsbad Application for Certification proceeding; this information is not relevant to the proceeding or reasonably necessary to make any decision on the amendment.

Data Request No. 10:

Background: SDG&E recently sold a forty-eight acre parcel at the Encina Parcel Site to Caruso Holdings. Caruso plans to erect an upscale mall at the site.

10. Please identify all projects that will be under construction at the same time as the amended CECP.

Staff’s Response: Staff objects to this data request in that the information is not reasonably available to Staff. Staff has not completed its analysis of the proposed amendments, but is compiling a list of projects that will be used to analyze cumulative impacts.

Data Requests No. 11:

11. Please provide a construction air quality impact analysis of all projects that will be under construction during the construction and demolition of the amended CECP. Please include the Carlsbad desalination plant and any other reasonably foreseeable projects.

Staff’s Response: Staff objects to this data request in that the information is not reasonably available to Staff. Staff has not completed its analysis of the proposed amendments. The Carlsbad Poseidon Desalination Plant is currently under construction.

Data Request No. 12:

12. The amendment application states “Upon completion of demolition of EPS, portions of the western areas of the Cabrillo Parcel will be removed from CEC jurisdiction and made available for redevelopment.” Please describe the impacts from reasonably foreseeable additional development in the analysis of this project.

Staff's Response: Staff objects to this data request in that the information is not reasonably available to Staff, is not relevant to the proceeding or reasonably necessary to make any decision on the notice or application. Furthermore, the information requested is outside of the Project Description and thus, outside of the Energy Commission's jurisdiction.

Data Request Nos. 13-14:

Background: The petition to amend states that the amended CECP will be constructed in the footprint of several existing fuel oil tanks. Given the known existing contamination near the fuel oil tanks, please provide a schedule for:

13. Demolition of the fuel oil tanks.

14. Environmental investigation after removal of the tanks.

Staff's Response: Staff objects to these data requests in that they are ambiguous to which fuel oil tanks, and the information is not reasonably available to Staff. Staff has not completed its analysis of the proposed amendments. Staff also objects that these data requests are outside the scope of Mr. Simpson's limited intervention. To the extent fuel oil tanks are part of the Petition to Amend, Staff will be providing its analysis in the PSA.

Data Request No. 15:

15. Remediation of contaminated soil found near the tanks to a level of insignificance.

Staff's Response: Staff objects to this data request in that it is ambiguous to which tanks, the information is not reasonably available to Staff, and the request is outside the scope of Mr. Simpson's limited intervention. Staff has not completed its analysis of the proposed amendments. To the extent fuel oil tanks are part of the Petition to Amend, Staff will be providing its analysis in the PSA.

Data Requests Nos. 16-21:

16. Please explain how "public convenience and necessity" (as discussed in California Public Resources Code § 25525) requires the capacity and energy represented by the CECP and that there are not more prudent and feasible means of providing this perceived energy need.

17. Please explain how the CECP facility will comply with Carlsbad Local Ordinance CS-158, Ordinance CS-159, Ordinance CS-160, and Resolution 2011-230.
18. Please identify the project's "extraordinary public purpose" as defined in Carlsbad Municipal Code 21.36.020.
19. Please describe how the project is coastal dependent as established by the California Coastal Act (Pub. Res. Code § 30101).
20. Please explain whether the project meets the requirement for a thirty-five foot height limitation (Agua Hedionda Land Use Plan Page p. 17, § 1.9; Exhibit 412).
21. Please explain whether the waters of Agua Hedionda are waters of the United States as defined in the Coastal Zone Management Act.

Staff's Response: Staff objects to these requests on the grounds that they exceed the scope of Air Quality, Greenhouse Gas Emissions and Public Health, the topics of Mr. Simpson's limited intervention. To the extent that these questions deal with whether the project will comply with all laws, ordinances, regulations and standards, Staff will be providing its analysis in the PSA.

Data Request No. 22:

22. Please identify exactly what permits and government approvals – coastal development, air pollution permit, PSD permit, endangered species act take permit, Army Corps of Engineers, California Fish and Game, USFWS, NPDES, etc. – the CEC license would represent. Identify the public participation opportunities, including public notice requirements, for the subsumed approvals, and compare them to the public participation opportunities before the Commission.

Staff's Response: Staff objects to this data request to the extent it exceeds the scope of Mr. Simpson's limited intervention. Without waiving this objection, any permits required for air quality, GHG or Public Health will be discussed in the PSA. Because many permits are subsumed into the Energy Commission's process, the public notice requirements for those permits are irrelevant. The public has several opportunities to participate in this proceeding, including, but not limited to, commenting on the

Preliminary Staff Assessment, the Final Staff Assessment (FSA), making comments during staff workshops and committee hearings, making comments at the Evidentiary Hearings, commenting on the Presiding Member's Proposed Decision, and commenting the Energy Commission's business meeting at which final action may occur.

Data Request No. 23:

23. Please identify all other government approvals not subsumed by the CEC license that would be required for the project to be developed and operated. Please include application status and expected dates of approval.

Staff's Response: Staff objects to this data request to the extent it exceeds the scope of Mr. Simpson's limited intervention. Any government approvals not subsumed by the Energy Commission license will be discussed in the PSA.

Data Request No. 24:

24. What state and federal regulations govern the project's impacts on these waters?

Staff's Response: Staff objects on the grounds that the request is ambiguous to the term "waters", and exceeds the scope of Mr. Simpson's limited intervention. The PSA and FSA will contain references to the state and federal regulations that apply to this project.

Data Requests Nos. 25-26:

25. Please identify potential air quality impacts on adjacent endangered species, flora, and sensitive habitats.
26. Please discuss whether a No Project Alternative, which is "a factually based forecast of the environmental impacts of preserving the status quo" has been examined (84 Cal.App.4th 315A, *Planning & Conservation League v. Dept. of Water Resources* (2000) at p. 917).

Staff's Response: Staff objects on the grounds that the requests exceed the scope of Mr. Simpson's limited intervention. Biological Resources and Alternatives will be analyzed in the PSA.

Data Requests Nos. 27-28:

Background: The Applicant should explain the environmental impacts of the CECP.

27. Please provide the most recent two years of on-site air quality monitoring.

28. Please provide the most recent two years of on-site meteorological data.

Staff's Response: Staff objects to these requests in that they are not reasonably available to Staff, not relevant to the proceeding or reasonably necessary to make any decision on the notice or application.

Data Request No. 29:

29. Based on the information in the two studies conducted by Mark Z. Jacobson, please describe whether your studies of CECP's potential air quality impacts have taken into account the enhancement of local air pollution by urban CO₂ domes.

Staff's Response: Staff will consider this comment in its analysis in the PSA.

Data Request No. 30:

30. Regarding the approved combined-cycle project compared to the proposed single-cycle project, please prepare a side by side comparison of air pollution and greenhouse gas emissions at varying operating loads.

Staff's Response: Staff objects to the extent that Mr. Simpson can reasonably obtain this information from the Carlsbad Application for Certification proceeding and the Petition to Amend. Also, "varying operating loads" is vague and ambiguous.

Data Requests Nos. 31-35:

31. Has the Applicant examined the value of underground carbon sequestration, including the value it might provide in offsetting the cost of participating in the state CO₂ cap and trade scheme as well as the value of increased electricity sales from preferred position in queue? If so, what did the Applicant find?

32. Have nearby farm owners and management been surveyed to determine if they would accept heat or carbon dioxide for intensified farming methods? Has the Applicant surveyed nearby farm owners and management to determine under what terms they would participate in algae farming for bio-sequestration of greater amounts of, what would otherwise be, air pollutants? If so, what did the Applicant find?

33. Have heat and cooling users within one mile of the project been surveyed to examine who would accept hot water from the project? Is there a cost benefit analysis that considers increased electrical sales derived from a

preferred position in the loading order because of the increased efficiency and environmental benefits?

34. Please describe how much on site solar could be developed in conjunction with the facility if all practicable surface area on buildings, in the parking areas, and elsewhere on-site are covered by solar panels. How would this lower emissions and effective heat rates?

35. Please explain whether the effectiveness of varying amounts and types of energy storage can be used to reduce environmental impacts.

Staff's Response: Staff objects to these requests because they are not reasonably available to Staff, not relevant to the proceeding or reasonably necessary to make any decision on the notice or application.

Data Requests Nos. 36-38:

36. Please identify the height that the temperature or pollutant emissions from the stacks would result in bird mortality in a collision with the plume. Identify the height at which emissions from the facility would merely disrupt avian flight.

37. Please explain whether the rapid start turbines startle local birds into flight into the intermittent inferno plumes?

38. Please identify the distance between proposed electrical wires, identify the wingspan of a typical adult brown pelican, and demonstrate how the distance between the wires prevents avian electrocution and the associated threat to public health.

Staff's Response: Staff objects to these data requests to the extent they exceed the scope of Mr. Simpson's limited intervention. Also, these data requests assume facts that are not necessarily true.

Data Request No. 39:

39. Has the pollution and potential pollutant accumulation in the lagoon been studied? If so, what were the results?

Staff's Response: Staff objects to this data request in that the information is not reasonably available to Staff. Staff has not completed its analysis of the proposed amendments.

Data Request No. 40:

40. Please identify the potential impacts to species and habitats including

aquatic species by elevated noise and light levels including construction noise, pile driving, and vibrations.

Staff's Response: Staff objects to this data request to the extent it exceeds the scope of Mr. Simpson's limited intervention.

Data Request No. 41:

41. Have greenhouse gas emissions from construction been modelled? If so, please describe what the modelling showed.[sic]

Staff's Response: Staff objects to this data request in that the information is readily obtained by Mr. Simpson in the Petition to Amend, Appendix 5.1. The answer to his question is "yes."

Data Request No. 42:

42. Have any studies been conducted examining the deposition impacts of criteria and toxic emissions on nearby critical habitats including the vernal pools? If so, what were the results of those studies?

Staff's Response: Staff objects to this data request in that the information is not reasonably available to Staff, and exceeds the scope of Mr. Simpson's limited intervention.

Data Requests Nos. 43-45:

43. Have any studies been conducted examining the impacts of ammonia emissions and the millions of gallons of vaporized water per day on biological resources? If so, what were the results of those studies?

44. When was the last time the biological assessment was updated utilizing the most recent environmental reports? Is an update to the biological assessment planned?

45. Please describe the effects of potential raptor perches in the planned tree canopy.

Staff's Response: Staff objects to these data requests to the extent they exceed the scope of Mr. Simpson's limited intervention.

Data Request No. 46:

Background: The Applicant should explain the public health impacts of the CECP.

46. Please provide the results of all research and consideration completed following the disclosure during public comments in the initial proceeding of a

cluster of adjacent leukemia/cancer cases and deaths potentially linked to the facility. If the issue was not studied, please explain why not. Also discuss whether any future studies are planned to determine the scope of public health impacts (especially leukemia and cancer clusters) from the amended project and whether it would exacerbate the effects on public health.

Staff's Response: Staff did not conduct a study of cancer clusters or of leukemia in the area during the initial proceedings in 2009 because there were not then, and are not now, any adjacent leukemia/cancer cases and deaths linked to the existing EPS (Report of the California Cancer Registry, California Department of Public Health 2009; Report of the Cancer Surveillance Section, Cancer Surveillance and Research Branch, California Department of Public Health 2010; SDAPCD Ambient Air Toxics Monitoring at Kelly Elementary School Carlsbad, California 2010). Staff did discuss this matter with a member of the public who raised a concern about cancer and this person expressed understanding and appreciation for the discussion. Staff did not include this question/response in the FSA section on *Response to Agency and Public Comments* but did provide responses to questions raised about cumulative health impacts.

Regarding future studies, besides conducting an independent health risk assessment (HRA) using the most recent Cal-EPA OEHHA methodology and reviewing the independent HRA conducted by the SDAPCD, staff does not plan to conduct any additional studies to determine the scope of public health impacts from the amended project. Staff's HRA conducted in 2009 demonstrated that the licensed CECP would not result in a significant risk or hazard to public health and staff's 2014 HRA (to be published in the PSA) shows that the amended CECP will also not result in a significant impact to public health.

Data Requests Nos. 47-52:

47. Has a survey of the gas pipeline intended to serve CECP been conducted in order to help ensure pipeline safety and help prevent another catastrophe like the one in San Bruno?

Background: data requests concerning the operation of the CECP.

48. Please compare the original approved combined-cycle facility with the amended proposal and disclose any requirements from SDG&E that the original facility could not satisfy.

49. If the operating parameters of the approved facility do not satisfy SDG&E requirements, please identify energy storage or other options that would cause the original plan to satisfy SDG&E requirements. Quantify the cost effectiveness and benefits to the developer of the improved position in the loading order.

50. Please describe how much renewable capacity the plant would support compared to the current system capacity. Include presently dispatched renewable resources, other proposed gas plants that propose to support renewables, and compare to the original plant's ability to support renewable energy. Explain whether the project is in the best location to support renewable energy.

51. If the amendment is denied, does the Applicant have full authority to develop the previously approved project? If not, identify any other approvals or permits required to allow that project to proceed and the status of applications.

52. If the amendment is denied, would the Applicant develop the approved project?

Staff's Response: Staff objects to these data requests to the extent they exceed the scope of Mr. Simpson's limited intervention. Furthermore, Staff objects to data requests numbers 48, 49, 50 and 52 in that they are not relevant to the proceeding or reasonably necessary to make any decision on the notice or application. The answer to number 51 is "yes", with respect to the Energy Commission's license.

Data Request No. 53:

53. Please disclose all ongoing communication with regulators/government agencies regarding the approval of the amended project.

Staff's Response: Staff objects to these data requests as they are overbroad and exceed the scope of Mr. Simpson's limited intervention. Without waiving these objections, the Commission will provide any documents responsive to Data Request No. 53 under the Public Records Act separately.

Data Requests Nos. 54:

54. Is the project considered a Public Utility?

