

DOCKETED

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December 23, 2014

VIA E-FILING

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Carlsbad Energy Center Project (07-AFC-06C)
Karen Douglas, Commissioner and Presiding Member
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California Energy Commission
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Re: **Carlsbad Energy Center Project, 07-AFC-06C**
Project Owner's Responses and Objections to Intervenor Rob Simpson's
Response to Applicant's Data Request Responses and Objections

Mr. Simpson and CECP Siting Committee:

Carlsbad Energy Center LLC ("Project Owner") herein provides the following responses and objections to Intervenor Rob Simpson's Response to Applicant's Data Request Responses and Objections ("Simpson's Response to Objections") filed on Dec. 15, 2014 regarding the Carlsbad Energy Center Project ("CECP") Petition to Amend ("PTA"). Simpson's Response to Objections was filed in response to Project Owner's Nov. 7, 2014 Responses and Objections to Simpson's Data Request Set 1 ("Objections to Data Request Set 1"). Simpson's Response to Objections contains revised data request numbers 34, 35, 39, 46, 47, 53, and 57.

General Responses and Objections

First, Project Owner objects to Simpson's Response to Objections because the revised data requests continue to seek information that is not relevant or reasonably necessary to make a decision on the PTA. Section 1716(b) of the California Code of Regulations authorizes the issuance of data requests for "information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. All such requests shall include the reasons for the request." (20 Cal. Code Regs. § 1716(b)). Based on the revised language of the data requests, Mr. Simpson attempts to remedy his inclusion in his October 29, 2014 Data Request Set 1 of data requests seeking information beyond the scope to which his intervention is limited. However, Mr. Simpson's

revised requests do nothing to remedy his failure to meet the standard set forth in section 1716(b) that the data request be relevant to the proceeding or reasonably necessary to make a decision on the PTA. Merely limiting such requests to air quality, greenhouse gas emissions, and public health, the topics to which Mr. Simpson's intervention is limited, does nothing to render them any more relevant to the proceeding or PTA. Mr. Simpson's general assertions that the requested information is necessary to "more fully understand the project" and to assess the project's construction and operation and its potential compliance with laws is not adequate evidence that the data requested is relevant or reasonably necessary to make a decision on the PTA. (Response to Objections at p. 1). Furthermore, as stated in Project Owner's Nov. 7, 2014 Objections to Data Request Set 1, the revised data requests continue to seek information not reasonably available to the applicant.

Second, Project Owner objects to Simpson's Response to Objections because the revised data requests are untimely. Whether viewed as new data requests or responses to Project Owner's Objections to Data Request Set 1, the requests are untimely. Under section 1716(e), "all requests for information shall be submitted no later than 180 days from the date the commission determines an application is complete, unless the committee allows requests for information at a later time for good cause shown." (20 Cal. Code Regs. § 1716(e)). In accordance with this rule and the Oct. 31, 2014 Revised Scheduling Order, the deadline for submission of data requests was Oct. 29, 2014. There is no good cause for the Commission to allow the revised data requests at this point in time. Thus, as new data requests, these requests are untimely.

Similarly, if viewed as responses to Project Owner's Objections to Data Request Set 1, the revised data requests are untimely. While the California Code of Regulations does not provide a specific timeframe for a party's response to a project applicant's objections to data requests, "the presiding member may set reasonable time limits on the use of, and compliance with, information requests in order to avoid interference with any party's preparation for hearings or imposing other undue burdens on a party." (20 Cal. Code Regs. § 1716(i)). Under section 1716(g), if a party is unable to obtain information, such party may petition the committee for an order directing the responding party to provide such information within either 30 days of being informed in writing by the responding party that such information will not be provided or within 30 days of the date the information was provided or was due. (20 Cal. Code Regs. § 1716(g)). Thus, if viewed as responses to Project Owner's Nov. 7, 2014 Objections to Data Request Set 1, the requests should have been filed within a reasonable timeframe, presumably by Oct. 7, 2014, 30 days from the date Project Owner's objections were filed.

Specific Responses and Objections

Set forth below are Mr. Simpson's original data request numbers 34, 35, 39, 46, 47, 53, and 57, Project Owner's original objections to those data requests, Mr. Simpson's revised data requests, and Project Owner's specific additional responses and objections to each of the data requests.

REVISED DATA REQUESTS:

1. **Simpson Data Request 34**

a) Original Data Request 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?

b) Revised Data Request 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?~~ and the extent to which this would impact air quality and greenhouse gas emissions from the site.

c) Project Owner's Response to Revised Data Request 34

Project Owner continues to object to this revised data request because the request seeks information that is not necessary for the Committee to reach a decision on the PTA because it seeks information that does not have a bearing on the project's ability to comply with applicable regulations or standards. The request for information regarding potential quantities of solar power that could be developed on the project site is not relevant to a potential significant impact or any applicable law, ordinance, regulation or standard. Further, Mr. Simpson does not make any attempt even to allege any such relevance.

Notwithstanding the above objections, Project Owner has not conducted a study to assess "how much on site solar could be developed...if all practicable surface area on buildings, in the parking areas, and elsewhere on-site are covered by solar panels;" and furthermore, there is no LORS or requirement that compels the Project Owner to conduct such a study. Consequently, Project Owner has no information that is responsive to this data request. With respect to air quality and greenhouse gas emissions from the site, the addition of solar panels to "all practicable surface" areas would have no quantifiable impact on air emissions or greenhouse gas emissions from the site.

2. **Simpson Data Request 35**

a) Original Data Request 35

Please explain whether the effectiveness of varying amounts and types of energy storage can be used to reduce environmental impacts and improve grid stability through smoothing or other advantages.

b) Revised Data Request 35

Please explain whether the effectiveness of varying amounts and types of energy storage can be used to reduce ~~environmental impacts and improve grid stability through smoothing or other advantages.~~ air quality and greenhouse gas emission impacts.

c) Project Owner's Response to Revised Data Request 35

Project Owner continues to object to this revised data request because the request seeks information that is not necessary for the Committee to reach a decision on the PTA because it seeks information that does not have a bearing on the project's ability to comply with applicable regulations or standards. The request for information regarding potential use of energy storage that could be developed on the project site is not relevant to a potential significant impact or any applicable law, ordinance, regulation or standard. Further, Mr. Simpson does not make any attempt even to allege any such relevance.

Notwithstanding the above objections, to the extent the request is asking whether on-site energy storage would be expected to reduce on-site air emissions and greenhouse gas emissions, on-site energy storage would likely result in an increase in on-site emissions. This is because on-site energy storage would likely result in increased facility operations at off-peak times to produce energy for storage, without decreasing expected operations during on-peak periods. To the extent the question is asking whether on-site energy storage would result in indirect emissions reductions at other unspecified facilities, Project Owner does not have information that would be responsive to this data request. To the extent this question is asking about off-site energy storage, Project Owner does not have any readily available information that would be responsive to this data request

3. **Simpson Data Request 39**

a) Original Data Request 39

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

b) Revised Data Request 39

Has the impact of pollution and potential pollutant accumulation in the lagoon on public health been studied? If so, what were the results?

c) Project Owner's Response to Revised Data Request 39

Project Owner continues to object to this revised data request because the request seeks information that is not necessary for the Committee to reach a decision on the PTA because it seeks information that does not have a bearing on the project's ability to comply with applicable regulations or standards. Further, the data request does not appear to seek project specific information, but instead appears to be seeking general information about the project vicinity. Mr. Simpson does not indicate why another party should be responsible for providing such information or research services to further an interest that is not articulated or explained.

Notwithstanding the above objections, CECP will result in the elimination of the Encina Power Station once thru cooling discharge to the ocean. The only water discharge from CECP that will enter the lagoon will be the continuation of stormwater discharged from the site. This discharge is currently and will continue to be discharged in accordance with Regional Water Quality Board (including section 401 water quality discharge requirements), County, and City of Carlsbad requirements, as applicable, and the CECP shall be in full compliance with stormwater discharge requirements.

4. **Simpson Data Request 46**

a) Original Data Request 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.

b) Original Response to Data Request 46 (Objections notwithstanding)

The potential risks to public health, including risks of cancer and of non-cancer health impacts, are discussed in Section 5.9 of the PTA.

c) Revised Data Request 46

Section 5.9 of the PTA discusses cancer and non-cancer health impacts, however it does not address the specific questions asked in Mr. Simpson's original data request about a nearby cancer cluster disclosed during public comments in the initial proceeding. Please respond to the original data request by discussing whether any actions have been taken to study and address that particular cancer cluster. [restatement of original data request]

d) Project Owner's Response to Revised Data Request 46

Project Owner continues to object to this data request because the requested information is not necessary for the Committee to reach a decision on the PTA because it seeks information that does not have a bearing on the project's ability to comply with applicable regulations or standards. Furthermore, Project Owner re-affirms its response that the potential risks to public health, including risks of cancer and of non-cancer health impacts, are fully discussed in Section 5.9 of the PTA.

Notwithstanding the above objections, Project Owner has not conducted any research related to this data request. However, in a December 2010 report, the California Department of Public Health concluded that:

"The results from this study show no elevation of cancer overall in the city of Carlsbad as a whole, the three CTs [census tracts] closest to the Encina Power Station, and the two CTS that included schools of concern. We observed an elevation of malignant

melanoma, consistent with the experience of San Diego County overall. One CT (178.09) had a higher than expected number of new cancer cases, but further review showed expected counts were only elevated in one segment of the population (women aged 20 years and older) with no elevation of any specific cancer type, a finding most consistent with statistical variation. Other than an elevation of malignant melanoma, patterns of cancer in Carlsbad were similar to patterns in the rest of San Diego County and California. CCR will continue to monitor the area, but there are no findings that indicate the need for further investigation at this time.”¹

5. **Simpson Data Request 47**

a) Original Data Request 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?

b) Revised Data Request 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?~~ the safety and health of the public? If so, what did the findings in the survey?

c) Project Owner’s Response to Revised Data Request 47

Project Owner continues to object to this revised data request because the request seeks information that is not necessary for the Committee to reach a decision on the PTA because it seeks information that does not have a bearing on the project’s ability to comply with applicable regulations or standards. Furthermore, the final decision for the currently approved CECP has already addressed potential impacts from the gas pipeline and the PTA does not significantly modify the gas pipeline design to warrant a re-examination of, or modification to, such findings.

Notwithstanding the above objections, the natural gas pipeline will be designed, constructed, and operated in accordance with 49 Code of Federal Regulations (“CFR”) Part 192 and CPUC General Order No. 112. Specifically, the gas pipeline will be designed in accordance with the standards required for gas pipelines in proximity to populated areas, and will be installed a minimum of 36 inches deep, as required by 49 CFR Part 192. Periodic leak surveys and cathodic protection surveys will be performed along the pipeline, as required by 49 CFR Part 192. CECP shall conform with all applicable federal and California requirements regarding construction, operations and maintenance, and testing of natural gas pipelines.

¹ “An Evaluation of Cancer Occurrence in Carlsbad, California, 1996-2008”, California Department of Public Health, December 2010. http://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/documents/Carlsbad_Cancer_Concern_Report_12-2010a.pdf.

6. **Simpson Data Request 53**

a) Original Data Request 53

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

b) Revised Data Request 53

Please disclose all ongoing communication with regulators/government agencies regarding the ~~approval of the amended project.~~ air quality, greenhouse gas emissions, and public health impacts of the amended project.

c) Project Owner's Response to Revised Data Request 53

Project Owner continues to object to this revised data request because the request seeks information that is not necessary for the Committee to reach a decision on the PTA because it seeks information that does not have a bearing on the project's ability to comply with applicable regulations or standards. Even with Mr. Simpson's minor changes to this data request to limit the scope to air quality, greenhouse gas, and public health impacts, compliance with this request would be unduly burdensome and time consuming. In addition, Project Owner is unable to reasonably discern how it would comply with this data request since the request appears to impose some sort of continuous obligation to provide or identify all "communication" with all "regulators/government agencies."

7. **Simpson Data Request 57**

a) Original Data Request 57

If grid stability requires the facility to operate more than the permitted amount, what will happen?

b) Revised Data Request 57

If grid stability requires the facility to operate more than the permitted amount, ~~what will happen?~~ what impacts will that have on air quality, greenhouse gas emissions, and public health?

c) Project Owner's Response to Revised Data Request 57

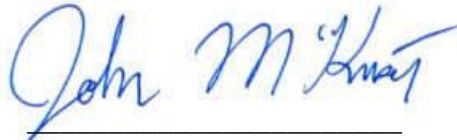
Project Owner continues to object to this revised data request because the request seeks information that is not necessary for the Committee to reach a decision on the PTA because it seeks information that does not have a bearing on the project's ability to comply with applicable regulations or standards. The data request was and remains tremendously vague and the small change to the data request has no effect on that problem. The request also appears to ask about potential consequences that could occur should the project owner not adhere to an applicable LORS. Such a question is beyond the scope of a data request seeking information from another party in a proceeding.

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Notwithstanding the above objection, Project Owner intends to operate the facility in compliance with all applicable permit conditions and Air District regulations. Consequently, no significant impacts to air quality, greenhouse gas emissions, or public health will be associated with operations.

Locke Lord LLP

A handwritten signature in blue ink that reads "John McKinsey". The signature is written in a cursive style with a horizontal line underneath the name.

By: John McKinsey

Attorneys for Carlsbad Energy Center LLC