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CITY OF CARLSBAD COMMENTS on the AMENDED CECP PRELIMINARY STAFF ASSESSMENT

The following are comments by the City of Carlsbad on the Preliminary Staff Assessment (PSA) for the Carlsbad Energy Center Project (CECP) Amendment (07-AFC-06C). Our comments focus on those areas where the City has knowledge and/or jurisdiction except for the overriding jurisdiction of the CEC. They are presented by topic in the order they are discussed in the PSA.

OVERALL

The City appreciates the thoughtful and thorough analysis contained in the PSA. We also appreciate that the CEC staff mentions and includes the Settlement Agreement in many sections, used input received from the City staff, and requested the City to review and comment on various plans and documents during compliance.

HAZARDOUS MATERIALS MANAGEMENT

The City concurs with the analysis and conclusions presented in the PSA. Our comments pertain to the role of the City during compliance.

Safety Management and Ammonia Storage - The City of Carlsbad Fire Department reviewed the safety portions of the Hazardous Materials Management section and did not have any comments or concerns on the analysis or conclusions. They ask that the CEC staff modify the conditions for the Safety Management Plan (condition HAZ-3, page 4.5-13) and ammonia storage facility (condition HAZ-4, page 4.5-13) to include CPD review and comment (comment in *italics*):

HAZ-3 The project owner shall develop and implement a Safety Management Plan for delivery of aqueous ammonia and other liquid hazardous materials by tanker truck. The plan shall include procedures, protective equipment requirements, training, and a checklist. It shall also include a section describing all measures to be implemented to prevent mixing of incompatible hazardous materials including provisions to maintain lockout control by a power plant employee not involved in the delivery or transfer operation. This plan shall be applicable during construction, commissioning, and operation of the power plant.

Verification: At least 30 days prior to the delivery of any liquid hazardous material to the facility **for demolition, commissioning, or operations**, the project owner shall provide a Safety Management Plan as described above to the City of Carlsbad Fire Department for review and comment and the CPM for

review and approval.

HAZ-4 The aqueous ammonia storage facility shall be designed to either the ASME Pressure Vessel Code and ANSI K61.6 or to API 620. In either case, the storage tank shall be protected by a secondary containment basin capable of holding 125 percent of the storage volume or the storage volume plus the volume associated with 24 hours of rain assuming the 25-year storm. The final design drawings and specifications for the ammonia storage tank and secondary containment basins shall be submitted to the CPM.

Verification: At least 60 days prior to delivery of aqueous ammonia to the facility, the project owner shall submit final design drawings and specifications for the ammonia storage tank and secondary containment basin to the City of Carlsbad Fire Department for review and comment and the CPM for review and approval.

Security Plan Conditions - The City of Carlsbad Police Department reviewed the security portions of the Hazardous Materials Management section and did not have any comments or concerns on the analysis or conclusions. They ask that the CEC staff modify the conditions for the Demolition and Construction Security Plan (condition HAZ-7, page 4.5-13 and 14) and Operation Security Plan (condition HAZ-8, page 4.5-14 and 15) to include CPD review and comment (comment in *italics*):

HAZ-7 Prior to commencing ~~tank demolition construction~~, a site-specific **Demolition and Construction Site Security Plan** for the **tank demolition and construction phases** shall be prepared and made available to the City of Carlsbad Police Department for review and comment and the CPM for review and approval.

HAZ-8 The project owner shall also prepare a site-specific security plan for the commissioning and operational phases that will be available to the City of Carlsbad Police Department for review and comment and the CPM for review and approval. The project owner shall implement site security measures that address physical site security and hazardous materials storage. The level of security to be implemented shall not be less than that described below (as per NERC 2002).

LAND USE

LORS Conformance - The City concurs, overall, with the description of the applicable local land use laws, ordinances, and standards (LORS), changes made to its LORS in 2011, and subsequent modifications made by the City in 2014 to accommodate the amended CECP with its smaller environmental footprint and commitment to remove the Encina Power Station (pages 4.6-8 to 4.6-10). During the Committee Conference on January 7, 2015, the Hearing Officer asked if the required changes have been made by the City. As shown in an update of the table entitled "Land Use Provisions Related To

The Amended CECP” (attached) provided to the CEC staff in August 2014, the City has made all of the changes required to make the amended CECP consistent with City LORS except for the 35’ height limitation (see below).

Community Vision and General Plan - The one area that appears lacking is a consistency analysis. The City recommends a short discussion be added on these topics. Our recommended language discussing the Community Vision and General Plan conformance is:

The Carlsbad Community Vision, accepted by the City Council in 2010, reflects the community’s aspirations for the city’s future and also informs the General Plan Update. It was developed over two years and reflects the input of more than 7,000 community members.

The Community Vision is based upon nine diverse core values ranging from open space and the natural environment to history, the arts and cultural resources. Each core value is expanded by a vision statement. The amended CECP is consistent with the Community Vision as expressed by these values and vision statements. For example, the proposal’s location between the railroad and freeway and demolition of the existing Encina Power Station frees up land for future community accessible uses. This is consistent with core values supporting access to recreation, beaches and lagoons, activating Carlsbad’s beachfront and promoting a stronger economy and tourism. Use of recycled water by the amended CECP promotes expansion and use of the city’s reclaimed water system and eliminates the need for ocean water, both of which promote the core values of sustainability and open space and the natural environment. The plant’s reduced profile, hours of operation, noise, and greenhouse gas emissions help it achieve consistency with the neighborhood revitalization, community design, and livability core value.

The General Plan Update, released as a draft for public review in early 2014, envisions demolition of the existing power plant, its redevelopment with open space and visitor-serving commercial uses, and the development of the amended CECP. The draft also identifies the many benefits of the amended CECP as compared to the existing power plant.

Additionally, draft General Plan policies reference the Settlement Agreement between the City of Carlsbad and the Carlsbad Municipal Water District, Cabrillo Power I LLC and Carlsbad Energy Center LLC, and San Diego Gas and Electric. They also specifically target the (1) Encina Power Station property west of the tracks (excepting the desalination plant) and the adjacent SDG&E service center site for comprehensive planning and redevelopment with a mix of visitor-serving commercial uses, such as retail and hotel uses, and with new community-accessible open spaces; and the (2) power plant property east of the tracks for development of the amended CECP, consistent with the settlement agreement. Finally, the draft land use map designates the amended CECP site as “Public,”

which is appropriate for power plants and other uses with a public/quasi-public character, and the majority of the remaining Encina Power Station property as "Visitor Commercial" and "Open Space."

During the Committee Conference on January 7, 2015, the Hearing Officer recognized that the City is in the process of updating its General Plan and zoning requirements and asked when those changes will be completed and if they will have any impact on the amended CECP. The General Plan Update is expected to be completed in mid-2015 and the zoning update is expected to be completed by the end of 2016. These updates will reflect all the changes made previously to the City LORS to accommodate the amended CECP and be consistent with the Settlement Agreement.

35-foot Height Limitation – On page 4.6-10, the PSA notes that:

"The amended CECP projects nonconformity with the AHLUP 35-foot height limit may be considered a significant impact under CEQA. Staff believes that the nonconformity with the 35-foot height provision is not a significant impact because the amended CECP's exhaust stack heights would be much lower than the existing infrastructure at the Encina Power Station facility; the amended CECP stacks would be 90-foot high, whereas the present facility's stack is 400 feet high. Thus, the effect of the amended CECP is to lower visual impacts, which are the primary concern of the 35-foot limitation."

The City agrees with that conclusion because the amended CECP's stacks would be lower than the stacks of the approved CECP and the amended project includes demolition and removal of the Encina Power Station stack and other facilities.

During the Committee Conference held on January 7, 2014, the Hearing Officer asked if this non-conformity can be dealt with through a variance rather than an override as occurred in the original proceeding and proposed on pages 4.6-14, 19, and 20. The City does not believe a variance is appropriate or possible. We note that the 35' height limitation is a standard within the Local Coastal Program Agua Hedionda Segment Land Use Plan (AHLUP). Any changes in the standard must first be proposed and approved by the City of Carlsbad and then be submitted to, reviewed and approved by the California Coastal Commission. The timing of the approval process by the Coastal Commission alone could require a year. Consequently, the City recommends the CEC override the standard in this instance as they did in the previous proceeding. In this instance, however, the City of Carlsbad believes the override is justified based on actual "extraordinary public benefits" that will result from the amendment. These extraordinary public benefits are the demolition and removal of the Encina Power Station by a date certain; allowing the state to meet its policy goals regarding once-through power plant cooling; reducing the visual blight and other environmental impacts at the site; and a clearly documented need for additional power in the San Diego region resulting from the premature closure of the San Onofre Nuclear Generating Station.

Coastal Rail Trail – The PSA retains condition LAND-1 (page 4.6-20) included in the original CECP decision with the expectation of moving the timing requirement for

compliance to the verification. The City concurs with moving the timing requirement and locating the trail on the west side of the railroad right-of-way but recommends other changes be made to the condition. In particular the City recommends eliminating the requirement for funds and allowing the establishment of an indeterminate easement prior to the start of construction. The latter will allow the City to work with NRG on the specific location of the trail during redevelopment. Our proposed revision to the condition, made in consultation with NRG, is:

LAND-1 The project owner shall dedicate an easement for the Coastal Rail Trail within the boundaries of the overall Encina Power Station Precise Development Plan area in a location mutually agreed upon with the city of Carlsbad located west of the north/south AT&SF/North County Transit District Rail Corridor ~~within 180 days from the start of construction.~~

~~If the project owner and the city of Carlsbad cannot reach agreement on the location of the easement (for example due to public safety and security reasons) the project owner shall provide funds to the city of Carlsbad for use in the development of the Coastal Rail Trail within the city of Carlsbad. The project owner shall provide funding to the city of Carlsbad for development of the Coastal Rail Trail as approved by the Compliance Project Manager (CPM) within 180 days of the start of construction. The amount and payment of funds will be determined by an independent appraisal of property within the boundaries of the Encina Power Station that would have been provided for a Coastal Rail Trail easement. The project owner shall select an appraiser for approval by the CPM and pay all costs associated with the appraisal.~~

Verification: The project owner shall provide proof of easement dedication ~~or appraisal and payment~~ to the city of Carlsbad ~~within 180 days from~~ prior to the start of construction. To meet this requirement, an indeterminate or blanket easement may be granted, containing provisions that it will be quitclaimed upon later dedication of a specific easement when specific redevelopment plans for the area are determined. Any easement granted to the city of Carlsbad must be subservient to and have inferior rights against later granted easements to the project owner for access or utility connections through the area west of the north/south AT&SF/North County Transit District Rail Corridor necessary for operation of CECP.

LAND-2 and 3 – The City concurs with removal of conditions LAND-2 and LAND-3 since removal of EPS is part of the project and Settlement Agreement

NOISE

Construction Noise - The City concurs with the CEC staff conclusion that the amended CECP is not expected to have any significant adverse noise impacts with

implementation of the proposed conditions. We request, however, that minor changes be made in the conditions NOISE-1, NOISE-8, and NOISE-9 to reflect the City's need to know when demolition or other noisy activities are expected to occur. The changes are (*in italics*):

NOISE-1 At least 15 days prior to the start of **any demolition activities associated with the amended CECP** ~~ground disturbance~~, the project owner shall notify *the City of Carlsbad and* all residents within one mile of the site to the north and northeast and one-half mile in all other directions, by mail or other effective means, of the commencement of project **demolition and** construction....

NOISE-8 **The project owner shall perform pile driving in a manner to reduce the potential for any project-related noise or vibration complaints. The project owner shall notify the City of Carlsbad and residents in the vicinity of pile driving prior to start of this activity. Vibrations from pile driving shall be limited to a peak particle velocity of 0.2 inches per second at receptors M5 and M7.**

Verification: At least 15 days prior to first pile driving, the project owner shall submit to the CPM a description of the pile driving technique to be employed, including calculations showing its projected noise impacts at monitoring locations M5 and M7.

At least ten days prior to first production pile driving, the project owner shall notify the City of Carlsbad and the residents within one-half mile of the pile driving. The notification may be in the form of letters, or other effective means, as approved by the CPM. In this notification, the project owner shall state that it will perform this activity in a manner to reduce the potential for any project-related noise and vibration complaints. The project owner shall submit a copy of this notification to the CPM prior to the start of pile driving.

NOISE-9 **When concrete work requires continuous pouring that may extend beyond the times specified in Condition of Certification NOISE-6, the project owner shall notify the City of Carlsbad and all residences in the vicinity of the project site of the commencement date and the duration of concrete pouring activities.**

The average L_{eq} noise levels from these activities shall not exceed the hourly average nighttime ambient L_{eq} levels at M5 and M7, by more than 5 dBA.

Verification: At least ten days prior to concrete pouring activities that are anticipated to extend beyond the times specified in Condition of Certification NOISE-6, the project owner shall submit a statement to the

CPM, specifying the time of night and the number of nights for which activities will occur, the approximate distance of activities to receptor locations M5 and M7, and the expected sound levels at these receptors, stating that the expected sound levels from this activity do not exceed the nighttime noise limits specified above.

At the same time, the project owner shall notify the City of Carlsbad and all residents within one-half mile of this work. The notification may be in the form of letters, or other effective means as approved by the CPM. In this notification, the project owner shall state that it will perform this activity in a manner to ensure excessive noise is prohibited, and include a telephone number that will be staffed throughout this activity for use by the public to report any undesirable noise conditions associated with these activities. The project owner shall submit a copy of this notification to the CPM prior to the start of this work.

Continuous Concrete Pours - During the Committee Conference on January 7, 2015, the Hearing Officer asked whether the continuous concrete pours allowed under condition NOISE-9 are appropriate within the City of Carlsbad's noise ordinance. The City's noise ordinance was amended in April of 2013 and allows the City to modify the allowable hours of construction to accommodate circumstances such as the need for continuous concrete pours if "the work is in the interest of the general public" (Section 8.48.020. exception f.).

Operation Noise - The Settlement Agreement between the City of Carlsbad, NRG, and San Diego Gas and Electric Company limited operation of the amended CECP between the hours of midnight and 6:00 am, except to the extent reasonably required for reliability-related purposes or as otherwise required by the ISO Tariff. (Settlement Agreement, Exhibit G, section 4.e, page Exhibit G-2). This limitation was not reflected in the PSA and should be included in condition NOISE-4.

Condition NOISE-4 seems overly complicated and most of the condition appears to deal with the process for selecting an alternative measurement location, survey methods, and use of survey results. To provide a clearer and more concise condition, the City recommends these points be moved to the verification.

The following is recommended rewording of the condition reflecting these two concerns:

NOISE-4 *There shall be no operation of the project between midnight and 6:00 am except to the extent reasonably required for reliability-related purposes or as otherwise required by the ISO Tariff.* The project design and implementation shall include appropriate noise mitigation measures adequate to ensure that operation of the project will not cause noise levels due solely to plant operation to exceed an average of 53 dBA L_{eq} measured at monitoring locations M1 and M7 *unless an alternative measurement location is approved by the CPM.* No new pure-tone components shall be

caused by the project. No single piece of equipment shall be allowed to stand out as a source of noise that draws legitimate **project-related noise** complaints.

~~The measurement of power plant noise for the purposes of demonstrating compliance with this condition of certification may alternatively be made at a location, acceptable to the CPM, closer to the plant (e.g., 400 feet from the plant boundary) and this measured level then mathematically extrapolated to determine the plant noise contribution at the affected residence. The character of the plant noise shall be evaluated at the affected residential locations to determine the presence of pure tones or other dominant sources of plant noise.~~

- ~~A. When the project first achieves a sustained output of 80 percent or greater of rated capacity, the project owner shall conduct a community noise survey at monitoring locations M1 and M7 or at closer locations acceptable to the CPM. These surveys shall be performed during power plant operation and shall also include measurement of one-third octave band sound pressure levels to determine whether new pure-tone noise components have been caused by the project.~~
- ~~B. If the results from the noise survey indicate that the power plant average noise level (L_{eq}) at M1 or M7 exceeds the above value, mitigation measures shall be implemented to reduce noise to a level of compliance with this limit.~~
- ~~C. If the results from the noise survey indicate that pure tones are present, mitigation measures shall be implemented to eliminate the pure tones.~~

Verification: The survey shall take place within 30 days of the project first achieving a sustained output of 80 percent or greater of rated capacity **with all turbine generators operating**. Within 15 days after completing the survey, the project owner shall submit a summary report of the survey to the CPM. Included in the survey report shall be a description of any additional mitigation measures necessary to achieve compliance with the above-listed noise limit and a schedule, subject to CPM approval, for implementing these measures. When these measures are in place, the project owner shall repeat the noise survey(s).

Within 15 days of completion of the new survey(s), the project owner shall submit to the CPM a summary report of the new noise survey(s), performed as described above and showing compliance with this condition.

The measurement of power plant noise for the purposes of demonstrating compliance with this condition of certification may alternatively be made at a location, acceptable to the CPM, closer to the plant (e.g., 400 feet from the plant boundary) and this measured level then mathematically extrapolated to

determine the plant noise contribution at the affected residence. The character of the plant noise shall be evaluated at the affected residential locations to determine the presence of pure tones or other dominant sources of plant noise.

- A. When the project first achieves a sustained output of 80 percent or greater of rated capacity, the project owner shall conduct a community noise survey at monitoring locations M1 and M7 or at closer locations acceptable to the CPM. These surveys shall be performed during power plant operation and shall also include measurement of one-third octave band sound pressure levels to determine whether new pure-tone noise components have been caused by the project.
- B. If the results from the noise survey indicate that the power plant average noise level (L_{eq}) at M1 or M7 exceeds the above value, mitigation measures shall be implemented to reduce noise to a level of compliance with this limit.
- C. If the results from the noise survey indicate that pure tones are present, mitigation measures shall be implemented to eliminate the pure tones.

SOCIOECONOMICS

The City has reviewed the socioeconomic section and concurs with the analysis, conclusions, and conditions. The City agrees with the language in condition SOCIA-1 and appreciates inclusion of condition SOCIO-2.

SOIL AND WATER

Will-Serve Letters – Pages 4.10-17, 27 and 35 note that the Carlsbad Municipal Water District (CMWD) has yet to formally respond to NRG's request for service. Since the PSA was published, the CMWD received and has reviewed NRG's proposal for pretreatment of wastewater for discharge into the sewer system. On January 8, 2015, CMWD issued a Will Serve Notice to NRG stating its willingness to provide potable water, reclaimed water, and sewer service to the amended CECP.

Emergency Water Supply – During the Committee Conference on January 7, 2015, questions were raised regarding the emergency water supply for the amended CECP project in the event recycled water is not available. As noted in condition SOIL&WATER-6, the City would provide potable water as the emergency back-up. The City, considers the recycled water system to be highly reliable and expects the lack of supply to be highly unlikely once the system improvements are completed. The City has two recycled water treatment plants able to provide serve this area. To reduce the potential for an emergency resulting from a line break, NRG is also proposing to have an onsite storage tank to supply recycled water for the property.

Water Supply Assessment – As noted on page 4.10-32, the City believes that preparation of a Water Supply Assessment (WSA) is not necessary or appropriate for the amended CECP. The City's letters submitted on December 8, 2014 and January 12, 2015 explain our position in detail and we request that the CEC staff include this information in the Final Staff Assessment.

TRAFFIC AND TRANSPORTATION

The City has reviewed the traffic and transportation section and concurs with the analysis, conclusions, and conditions. The City requests that it be given an opportunity to review and comment on the traffic control plan identified in condition TRANS-1. Our revised language for that condition is (changes in *italics*):

TRANS-1—The project owner shall consult with the city of Carlsbad and prepare and submit to *the City of Carlsbad for review and comment* and the Compliance Project Manager (CPM) for approval a construction/**demolition** traffic control plan.

The City concurs with the recommendation to maintain the roads in the vicinity of the project during construction and demolition as well as once the project is completed and suggests the following change to condition TRANS-5:

TRANS-5—*During and Following* completion of project construction **and demolition**, the project owner shall repair any damage to roadways affected by construction/**demolition** activity **to pre-project road conditions or better**.

FIRE PROTECTION

The City of Carlsbad Fire Department has reviewed the fire protection discussion and concurs with the CEC staff's analysis and conclusions. The Fire Department remains willing to supply emergency services during all phases of project construction and operation.

Upper Rim Road – During the PSA workshop, there was considerable discussion on the potential for visual and security issues if and when Caltrans widens Interstate-5. The City believes it is also important to ensure that the upper rim road be maintained to provide access for emergency personnel above and around the bowl (see PSA pages 5.7-5 and 6). The following is change in WORKER SAFETY-6 is proposed to reflect the importance of maintaining the upper rim road (changes in *italics*):

WORKER SAFETY-6 The project owner shall ensure that the below-grade site fire lanes, access points, and ramps (with no more than a 10 percent grade) are constructed as per the dimensions shown in **Worker Safety Figure 1** and that at least two access points through the site perimeter and into the below- grade power plant site are available to the CFD and other emergency

response providers. The access roads, below-grade perimeter road, and ramps shall be no less than 28 feet wide. The project owner shall guarantee that the two fire access ramps down into the project site and the fire lane around the perimeter of the below-grade site and the upper rim road are free and clear of all vehicles, equipment, or any other object (mobile or stationary) at all times and that the boundaries or curbs of the ramps and lanes are painted red and contain signage to indicate that they are fire roads and lanes on which parking is not allowed. The final blueprints for the site shall be submitted at least 30 days prior to the start of site mobilization to the Carlsbad Fire Department for review and comment and to the CPM for review and approval. Any requested changes in the fire lanes, upper rim road, ramps, and access points shall be made in writing to the CPM and the CBO for review and approval after obtaining comments from the CFD.

VISUAL RESOURCES

The City believes that removal of the Encina Power Station and all its related facilities will be a significant improvement in the visual landscape even with the addition of the amended CECP.

The City appreciates the opportunity to review and comment on the landscape and other visual plans and the opportunity to inspect installed plants and irrigation. This is a function typically performed with the City's consultant landscape architect on similar development. The City is willing to work with the CEC, NRG, and Caltrans on the visual screening between the amended CECP and Interstate-5. To the extent possible, the conditions (VIS-2, 3, and 5) should specify that the plans comply with the requirements of the City of Carlsbad Landscape Manual. This would address the need to use drought tolerant and low water use plantings to stay within a maximum water allowance. The review of visual screening and landscape plans should also consider the perimeter fencing around the site and security barrier adjacent to I-5 required in condition HAZ-8 to ensure they are reasonably complimentary to the landscaping and visual screening objectives and feature an attractive design when visible to the public.