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Memorandum

To: Carlsbad Siting Committee
Commissioner Karen Douglas, Presiding
Paul Kramer, Hearing Advisor

Date: January 22, 2015

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Subject: Staff Response to Committee Order Regarding Preliminary Staff Assessment
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1. Clarification: CEQA Compliance and Siting Environmental Documents

The January 15, 2015, Committee Order correctly implies that the Energy Commission siting process must satisfy the substantive requirements of CEQA. However, the Order creates confusion by stating that the Committee "intend[s] to re-use the 2012 Commission Decision as a previous Environmental Impact Report (EIR)." Staff believes that the Order's intent was to indicate that the critical environmental analysis documents from the prior licensing proceeding will, to the extent appropriate, be part of the record that the Committee may rely on in the Carlsbad amendment proceeding.

The Energy Commission has adopted, and the Natural Resources Agency has approved, a "certified regulatory program" for the Commission's power plant siting program. (Cal. Code Regs., tit. 14, § 15251, subd. (j).) Such programs are exempt from preparing EIRs, although the program in its totality must provide the substantive project review that CEQA requires. (See Pub. Resources Code, § 21080.5, Cal. Code Regs., tit. 14, §§ 15250-15253.) The Commission program fulfills this substantive requirement with multiple documents, in particular the Final Staff Assessment (the primary environmental analysis document, which usually includes response to public comment), any separate response to comments, and the Final Decision. These documents contain the fundamental elements of the Draft and Final EIR that CEQA otherwise requires agencies to prepare. But it is perilous and confusing to assign EIR equivalence to a single document, such as the Final Decision, and the Commission has not historically done so.

Importantly, the Committee's statement correctly identifies the environmental documents from the previous licensing proceeding as relevant information regarding the project that should be available to the Committee (and Commission) in making its findings and decision. Accordingly, Staff requests that the Committee take official notice of the Final Staff Assessment, Final Decision, and any other relevant documents that were part of that earlier proceeding. Staff requests that a clarifying order provide official notice of such documents.

2. Use of Previous Environmental Documents

CEQA is not intended to create redundant or needless analysis. CEQA Guidelines section 15162, quoted in the Committee Order, prohibits preparation of subsequent EIRs for a project except in certain circumstances identified in that section. Generally speaking, the provision may be condensed to state that a subsequent environmental document is justified where there are major revisions in the project that would require major revisions in the environmental analysis, where there are new significant environmental effects, greater intensity of those effects, or changes in the mitigation required to address those affects.

Section 15162 is consistent with the Energy Commission's provisions, a part of its certified regulatory program, that address amendments to licensed projects. Those provisions provide that major changes in a project, made by formal amendment, be the subject of new environmental analysis, with discussion of any new mitigation required to address significant impacts. (Cal. Code Regs., tit. 20, § 1769, subd. (a)(1).) The changes must also be evaluated for compliance with laws, ordinances, regulations, and standards. (*Ibid.*) This is what Staff has done in the Preliminary Staff Assessment.

Staff reads page 2 of the Committee Order as a request that the FSA specifically identify, in a general manner, the changes in the project that require new environmental analysis, including changes in the mitigation for project impacts. Staff intends to do this by (1) inserting into the Executive Summary the changes in the project that require additional environmental analysis, and (2) summarizing briefly, near the beginning of each technical section, the project changes that are "new information" requiring new environmental analysis for that section, and any changes in the required mitigation.

Most of the technical sections in the PSA required revision because of project changes. One or two of the sections do not, but even so, a full analysis of the technical area is provided in the PSA. Rather than deleting these very few sections and relying on analysis in documents from the previous licensing proceeding (prepared in 2009-2012), which could cause confusion to the interested public, Staff intends to retain these PSA sections for the FSA.

Staff requests that the Committee confirm that the above actions are consistent with its order, either by subsequent order or confirmation at the next status conference.

3. Water Supply Assessment

Staff initially requested that the City of Carlsbad provide a Water Supply Assessment (WSA) if the amended NRG is a "project" for purposes of the Water Code. The City has explained in its submittals that the amendment is not a "project" for those purposes, and consequently, it will not provide a WSA. Staff does not disagree with the City's conclusions on this matter. Even so, Staff will, in the FSA, attempt to provide the substantive information that a WSA would include, were such a document required for this project.

Respectfully submitted,

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