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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the matter of: ) Docket No. 07-AFC-06C
Carlsbad Energy Center )
Amendments )

COMMITTEE STATUS CONFERENCE

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 4, 2015
2:00 P.M.

Reported by:
Kent Odell
APPEARANCES

Committee:

Commissioner Karen Douglas, Presiding Member
Commissioner Andrew McAllister, Associate Member
Paul Kramer, Hearing Officer
Jennifer Nelson, Adviser to Commission Douglas
Christine Stora, Adviser to Commission Douglas
Eileen Allen, Commissioners’ Technical Advisor on Siting matters

Parties:

Applicant – George Piantka, John McKinsey

CEC Staff – Jon Hilliard, Kerry Willis, Dick Ratliff, Will Walters, Matt Braun

Interveners – Power of Vision – Julie Baker & Arnold Roe, Ph.D.
– Robert (Bob) Sarvey

Others:

City of Carlsbad – Robert Therkelsen, Consultant

Public Adviser – Alana Mathews
INDEX

Meeting Agenda

1. Call to Order: Introductions 4
2. Hearing on Any Pending Motions 6
3. Committee Conference 7
   a. Case progress and schedule, including choosing Prehearing Conference and Evidentiary Hearing Dates
   b. Parties identify issues of likely concern and provide preliminary estimates of hearing time required
   c. Review whether the scope of any party’s intervention should be expanded or reduced
   d. Schedule next Status Conference
4. Public Comment 20
5. Closed Session 20
   Adjournment 23
   Reporter's Certificate 24
   Transcriber's Certificate 25
COMMISSIONER DOUGLAS: All right, good afternoon everyone. Welcome to the Energy Commission. This is a Status Conference, a Committee Status Conference on the Carlsbad Energy Center Amendments.

My name is Karen Douglas, I’m the Presiding Member on this Committee, and my colleague, Andrew McAllister, who will be sitting to the left of Hearing Advisor Kramer, is the Associate Member. To my left is the Hearing Office, Paul Kramer, to his far left down the dais is Eileen Allen, she’s the Technical Advisor to the Commissioners on Siting. To my immediately right, Christine Stora, and to her right, Jennifer Nelson, my Advisor.

So with that, let me see if the parties could introduce themselves, starting with the Applicant.

MR. MCKINSEY: Good afternoon. John McKinsey with Locke-Lord, for the Project Owner, Carlsbad Energy Center, LLC, and also with me is George Piantka from NRG, representing the Project Owner, as well.

COMMISSIONER DOUGLAS: All right, thank you.
And staff?

MS. WILLIS: Good afternoon, Kerry Willis, Staff Counsel. With me is Dick Ratliff, Staff Counsel, and Jon Hilliard, a Project Manager.

COMMISSIONER DOUGLAS: Great, thank you.

Let’s go now through the Interveners. Is anyone on the phone from Terramar Association? Okay, we didn’t think they were going to be on, we’re just checking. Power of Vision, are you on?

MS. BAKER: This is Julie Baker.

COMMISSIONER DOUGLAS: Great.

DR. ROE: And this is Arnie Roe.


HEARING OFFICER KRAMER: He was here.

COMMISSIONER DOUGLAS: Oh, his name is up here.

HEARING OFFICER KRAMER: Yeah, he was up here a minute ago, so maybe he stepped away from his phone.

COMMISSIONER DOUGLAS: Okay, well, his name is up here and we’ll check in with him later. We’ve just been joined by Commissioner McAllister.
MR. SARVEY: Yeah, I’m here. This is Bob Sarvey.

COMMISSIONER DOUGLAS: Oh, fantastic, all right. Thank you.

MR. SARVEY: Thank you.

COMMISSIONER DOUGLAS: All right, City of Carlsbad?

MR. THERKELSEN: Bob Therkelsen representing the City of Carlsbad.

COMMISSIONER DOUGLAS: All right, thank you. Public Advisor is here, Alana Matthews. Is anyone on the phone or in the room from the California Independent System Operator? Or the San Diego Air Pollution Control District? Steven Moore? No? Okay. Anyone here or on the phone from the Coastal Commission or any other state, local, federal government agency, or a Native American government?

All right. So with that, I’ll turn this over to the Hearing Advisor.

HEARING OFFICER KRAMER: Thank you. The first item on the agenda was hearings on pending motions, but there are none, so let’s move on to the Committee Conference portion where we’re going to discuss the case progress and schedule and possibly including choosing pre-hearing conference and
So by way of quick review, the Final Staff Assessment is scheduled to be out on February 17th according to the current schedule. And we put out word about a week and a half ago that we had targeted April 1st and April 2nd as dates for the Evidentiary Hearings down in Carlsbad. We didn’t change that in the official schedule yet, but it was in the memo that I put out about what we were expecting people to talk about in their staff reports, etc.

So we were really hoping the Air District would be with us, so maybe we’ll come back to them if they come in. Does anybody know what the status is on the Final Determination of Compliance? Have any more recent word from them than last time?

MR. HILLIARD: No. Actually Steven Moore was supposed to be joining us today, I think he’s probably going to be phoning in shortly, if not. But we haven’t heard a status report yet on ETA for the final determination.

HEARING OFFICER KRAMER: Did you just come in, Mr. Moore?

MR. WALTERS: No, this is Will Walters. I have updated information. Mr. Moore is actually home sick today. He provided an email that just noted
that they are evaluating comments and they don’t have a specific date for publication of the FDOC right now.

HEARING OFFICER KRAMER: Can you read between the lines at all, if you’re so bold?

MR. WALTERS: All I can do is hope that it’s done a day or two before the FSA date

HEARING OFFICER KRAMER: Okay, thank you.

Okay, any new word from the Coastal Commission?

Everyone is shaking their heads.

MR. RATLIFF: Not a peep.

HEARING OFFICER KRAMER: Okay. Although she’s not here, perhaps she’ll read this in the transcript or maybe Ms. Baker or Dr. Roe will tell Ms. Siekmann that because, in her status report for Terramar, she seems to imply perhaps that she’s expecting that we will not go forward with hearings until we have heard from the Coastal Commission and that is, in fact, not the Committee’s intention, and we do not feel that we are required by law to have a report from them. So we welcome their input, but we will be going forward, regardless. And she was also hinting at the possibility that she would want to make data requests should some kind of report from the Commission come. Without seeing a particular
data request, we can’t of course rule upon it, but I think we can say it would be very unlikely that a data request of an agency that’s not a party at this late stage in the proceedings would be allowed.

And then, let’s see, how are we doing with the cultural research? Are we going to be able to have the final answer in the FSA? See the word “push”?

MR. BRAUN: We got the work done and we should -- Matt Braun with staff -- and we should be expecting the report this afternoon, actually. So it will be all included for the FSA.

HEARING OFFICER KRAMER: Okay, great. Mr. Court Reporter, did you get his name?

MR. BRAUN: Braun, B-r-a-u-n.

HEARING OFFICER KRAMER: Thank you. Okay, that sounds good, thank you.

And then finally, the staff filed a response to what we can call the Committee’s Comments on the PSA, and asked us to confirm whether the approach to both the reuse of the previous Environmental Analysis and the Water Supply Analysis that they described in their filing, which is TN20352, they asked if that approach was what we were looking for and basically the answer is yes. So, thank you.
And we did ask for this meeting that the parties start to identify the issues of concern to them and provide some estimates of the hearing time required, and we thank you for that. I’ll note that Mr. Simpson failed to file any sort of status report, which is, well, I think he knows from both the admonitions this time and from the last time that failing to file those reports can cause his participation, especially in the hearings, to be limited or perhaps even be eliminated. And I know he’s not here to hear that, but it is his obligation to keep up with the news and the orders and the requirements.

We also had a place on the agenda for parties to discuss perhaps either expanding or reducing the scope of their intervention, but in order to do that we set a prerequisite that they give us a heads up in their status reports that they wanted to do so. And unless I missed something, I did not see anything in any of the filings of the parties, so I think we can skip beyond that portion of the agenda.

And that brings us to a question. Do we need another status conference before we go forward to the stage of the prehearing conference and then
the evidentiary hearings? We’re probably looking at
a prehearing conference based on the April hearing
date somewhere in the middle to latter part of March,
and so given that issues could come up, motions might
be filed, and that sort of thing, I’m inclined to at
least schedule the Conference in early March, maybe
about a month from today and, in fact, a month from
today, March 4 seemed to work good with the
Commissioner’s schedule when I consulted their
Executive Assistants earlier today. And the idea
there is, if we do have something come up, we’re
already noticed, we’re ready to deal with it, rather
than having to scramble and, you know, find dates on
calendars that fill up, but we may also find that we
don’t need the status conference. So what are the
thoughts of the parties on that question?

MR. MCKINSEY: I think the idea of a
tentative status conference, if for whatever reason
we have some issues that would prevent the proceeding
from moving on the schedule, that having one
scheduled would be good and the Committee could give
notice at some point prior to it, whether it was
going to actually be used or not.

HEARING OFFICER KRAMER: Anyone else?

MS. WILLIS: Staff is fine with that date,
but otherwise we don’t believe we’ll need another status conference.

HEARING OFFICER KRAMER: Okay, great.

Interveners, anyone else have a thought about that?

MR. SARVEY: Yeah, this is Bob Sarvey. Can you hear me?

HEARING OFFICER KRAMER: Oh, yeah.

MR. SARVEY: I think we should have a status conference on March 4th.

HEARING OFFICER KRAMER: Okay, thank you.

So then we’ll put out a notice, maybe not right away, but shortly, and that probably will be combined with a Notice of the Pre-Hearing Conference if we decide to set that in a few minutes.

MR. SARVEY: Mr. Kramer?

HEARING OFFICER KRAMER: You go ahead.

MR. SARVEY: Could we backtrack a little bit? I need a little bit of clarification on the use of the 2012 Decision, you know, as far as utilizing the Decision. Does that include the briefs, the testimony, the FSA? What does that include?

HEARING OFFICER KRAMER: Using the testimony in what way? That you would simply refer to it in a brief?

MR. SARVEY: Well, no. Basically, you know,
are we just talking about the decision itself, using
the decision as evidence in the briefs and stuff?
Does the FSA from the 2012 decision, is that stuff
that we can use in our briefs and, you know, that
type of stuff, I’m not sure what the scope of using
the 2012 Decision is, is what I’m saying.

HEARING OFFICER KRAMER: Okay, if you look
at the Committee’s comments, that document I referred
to, well, I actually didn’t refer to that one, I’ll
give you the TN number. The document that staff
responded to was called “Committee Order Following
the Preliminary Staff Assessment,” and the TN number
is 203527. Anyway, in there we basically paraphrased
the law, which was CEQA Guideline Section 15162,
which explains the circumstances under which an
agency would just use a previous environmental
document and its conclusions, rather than redo its
analysis. The idea there is, if there’s no reason to
change the analysis from the 2012 decision, then we
go and use its conclusions, we don’t re-litigate all
that again, basically it’s a streamlining tool to
allow for the more efficient processing of a later
step in a project’s life, in this case an amendment.
So you know, I will not attempt to give you
legal advice, Mr. Sarvey, but basically what we have
is kind of a two-step process: if we first determine that there’s no reason to supplement or otherwise add to the previous EIR’s discussion of a particular topic, let’s say public health, then we just -- we make our decision on the basis of the environmental information that was contained in the previous decision and move forward. And if you disagree with what the previous decision said and you were to go to Court, the Court would tell you, well, the time to have challenged that was back in 2012, for instance. But staff has asked us to take official notice of some of the documents in the 2012 proceeding, including the final staff assessment, the thought there being that the EIR equivalent, if you will, that came out of that proceeding was both that decision and some of the analysis that came before it. Does that answer your question?

MR. SARVEY: That’s helpful, Mr. Kramer.

Thank you.

HEARING OFFICER KRAMER: Okay, you’re welcome. So where was I? Okay, we’re talking about schedule. Does anybody believe that we’re not going to be ready to go to hearing in early April, either here or on the phone?

MR. SARVEY: I will not be able to go to
hearings in early April, unless we have an FDOC.

HEARING OFFICER KRAMER: Okay. Anyone else?

Okay, well, then that means we’re going to call April 1st and April 2nd our hearing dates, they’ll be in Carlsbad. Mr. McKinsey and Mr. Piantka will get us a suitable facility for that, you know, the full WebEx and AV setup so that we can have perhaps some of the witnesses testify remotely.

And then we need to pick a date for the prehearing conference. What we had were several days the week of March 16 which is a Monday, we could do the morning or the afternoon on the 16th. On Wednesday, the 18th, we could do morning, say 9:00 to 12:00, or on Friday the 20th any time was available. Given that the 18th would be two weeks before the hearings, I’m not -- well, hold on a second, okay, so the 18th from 9:00 to 12:00 in the morning, that’s in March, of course, looks good to us. Does that cause any heartburn for any of the parties?

MS. WILLIS: Not for staff.

DR. ROE: Mr. Kramer, this is Arnie Roe. Where will the prehearing conference be held?

HEARING OFFICER KRAMER: We could barely hear you, Dr. Roe, but the prehearing conference would be held up here in Sacramento, so you could
attend by WebEx as you are today.

DR. ROE: Thank you.

MR. MCKINSEY: No issue for the project owner on that day.

HEARING OFFICER KRAMER: Staff?

MS. WILLIS: No issue for us.

HEARING OFFICER KRAMER: Okay, then we will make it -- Interveners, any calendar conflicts?

Okay, hearing none, so we will have the prehearing conference be on the 18th from 9:00 to 12:00. The Evidentiary Hearings, let me ask the Commissioners, I’m assuming we would fly down that morning?

COMMISSIONER DOUGLAS: Yes.

HEARING OFFICER KRAMER: Okay, so we’ll probably start, then, somewhere around, well, no earlier than noon I would think. And then we’ll go into the evening for public comment for the convenience of the public. And whatever we need to finish up, we’ll finish up the following day.

Okay, so we’ll pick an exact date when we send out a notice, but assume for planning purposes the prehearing conference statements, including Exhibit Lists, would be due probably about a week before the prehearing conference. And just a reminder to the parties, the way we now handle
exhibits with our electronic filing system is anything that you want to be an exhibit needs to be in the docket for this case. So for instance, if you wanted to bring in a document that you had as an exhibit in the earlier Carlsbad case, first of all, that wasn’t in the electronic filing system, but even if it had been it needs to be refiled as a document in this case because we can only put exhibit tags on documents that are filed in the Carlsbad compliance or amendments Docket 07-AFC-06C. So get your documents in there ahead of time. When we come to ask you to identify your exhibits, what we’re going to ask you for is an exhibit number, and then also the TN number, which is the unique number in our filing system for that document. And then what happens is my office goes in and makes a -- we have the permission to then attach the exhibit number to the document. And if more than one of you want the particular document to be your exhibit, that’s a tie because we can only have one exhibit number per document, so we will resolve the ties on the basis of whom it seems most closely aligned with.

But if we do that and, for instance, you want a particular document to be your exhibit 302, and we give that to somebody else, then your 302 just
will be blank, you’ll have a gap in your exhibits, but that’s not a problem, we don’t consider that to be any sort of issue.

DR. ROE: Mr. Kramer?

HEARING OFFICER KRAMER: One more thought and then, Dr., I’ll let you go. We’ll also be asking you to identify your witnesses and give estimates for the time you think they’re going to take and I’ll further be asking you to tell us whether you think a particular topic would be better handled by formal or informal testimony. And there might be one or two other things that I’m forgetting at the moment, but a very helpful place to look to see what we’re going to be expecting from you would be the memo that I put out to the parties in advance of the December status conference. In fact, I have it here, so I’ll give you the TN number. Look at that to see what is going to be expected of you, and that is TN203377. Dr. Roe, with the first question?

DR. ROE: Yeah, as far as the numbers that we assigned to our exhibits, if I recall correctly at the previous hearings, did the committee assign a range of numbers to each of the parties?

HEARING OFFICER KRAMER: Yes. We will do that when we put out a notice.
DR. ROE: Oh, okay. Thank you.

HEARING OFFICER KRAMER: Any other questions?

MS. BAKER: I also --

HEARING OFFICER KRAMER: Go ahead.

MS. BAKER: It’s Julie Baker. Could you clarify, or perhaps I misunderstood you, about the TN numbers. We need to generate a TN number for our documents?

HEARING OFFICER KRAMER: No. When you electronically file a document, the system gives it one.

MS. BAKER: Okay, sorry, then I misunderstood you. I thought that’s how it worked, but then you -- okay, thanks.

HEARING OFFICER KRAMER: Yeah, you’ll see it on the Docket stamp on the first page of the document.

MS. BAKER: Okay.

HEARING OFFICER KRAMER: Okay, and we can talk about whether we need post-hearing briefs either at the prehearing conference, or the Evidentiary Hearings, or, well, that would be the last time, but plan on their being due relatively shortly after the hearings. We’ll probably order expedited transcripts.
so you’ll have those very quickly, and then you’ll
have a little bit of time to finish your brief. But
we fully expect that, even if you don’t have the
transcript in hand, you remember enough of what
transpired so that you can write most of your brief
and just fine tune maybe a quote or two, or find the
reference to the particular part of the transcript
after it comes out. But we won’t be terribly
sympathetic to somebody saying, “Well, I couldn’t
even start on writing my brief until I got the
transcript.” So any more questions about that?

Okay, then we’re on the public comment
portion of the agenda where members of the public and
other interested persons may speak up to three
minutes on a matter that’s appearing on this agenda.

MR. THERKELSEN: Mr. Kramer?

HEARING OFFICER KRAMER: Mr. Therkelsen?

MR. THERKELSEN: Yeah, Bob Therkelsen with
the City of Carlsbad. Since we’re not a party, I did
not submit a status report on behalf of the City and
you had asked the other parties in their status
report this last month to include their estimate of
hearing times and issues that they would like to have
discussed at the hearings. And I may have been
remiss in not sending you a letter or memo to that
effect. Would you prefer that I go ahead and send
something to you in the next couple of days regarding
that? Or do you want us to wait until prehearing
conference statement?

HEARING OFFICER KRAMER: I think it would be
helpful if you identified that fairly soon for the
sake of the other parties.

MR. THERKELSEN: We’ll get that out in the
next day or two.

HEARING OFFICER KRAMER: We’re certainly
going to want you to have some City representatives
available to us for perhaps some questions about land
use and some of the other areas, water supply, and
traffic perhaps.

MR. THERKELSEN: That was our intent, was to
make sure we had City staff available on question you
had, but in particular we knew that there probably
would be a need for clarification on the City’s
position on land use, water, fire protection, and
noise, etc. So that’s what we were proposing to have
available for you.

HEARING OFFICER KRAMER: Okay. Now, is the
City feeling the need to ask any questions of other
witnesses?

MR. THERKELSEN: No, we don’t have a need to
cross examine anybody else. Our position right now would be more to provide information for the record in terms of the City’s position and, frankly, our amount of hearing time on any topic would probably be about 10–15 minutes at the most.

HEARING OFFICER KRAMER: Okay, thank you.

MR. MCKINSEY: Hearing Officer Kramer, I would suggest, too, that I think it would certainly be possible for either staff and/or the Project Owner to simply accommodate City witnesses within that portion of their testimony, so, I mean, in fact that’s kind of what I think we’ve done in the past in a lot of circumstances where the City is not a formal party, but then they’re actually a witness that’s providing something that is testimony.

HEARING OFFICER KRAMER: And that is fine, as well, whatever you want to work out. We do appreciate having the resources, though. Thank you.

Okay, so is there anyone in the room that wants to make a public comment? Anybody on the telephone? Are all the lines unmuted, Susan?

Okay, hearing no public comment, just stand by for a second. Okay, there’s no reason for us to have a closed session today, so with that, then, is there any other business before we adjourn from
anybody, on the telephone or in the room? Okay, thank you. We are adjourned and we’ll see you perhaps on March 4th for a status conference, otherwise March 18th for a prehearing conference.

Thank you.

(Adjourned at 2:33 p.m.)
REPORTER’S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of February, 2015.

[Signature]

Kent Odell
CER**00548
TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of February, 2015.

Karen Cutler
Certified Transcriber
AAERT No. CET**D-723