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STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

In the Matter of:

THE CARLSBAD ENERGY CENTER PROJECT

DOCKET NO. 07-AFC-6C

PETITION TO INTERVENE BY SIERRA CLUB

Tamara Zakim
Trent Orr
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
Telephone: (415) 217-2000
tzakim@earthjustice.org
torr@earthjustice.org

Matthew Vespa
Senior Attorney
Sierra Club
85 Second St., 2nd Floor
San Francisco, CA 94105
Telephone: (415) 977-5753
matt.vespa@sierraclub.org

Counsel for Sierra Club

Dated: February 20, 2015

STATE OF CALIFORNIA

**Energy Resources Conservation
and Development Commission**

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DOCKET NO. 07-AFC-6C

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I. Introduction

Pursuant to sections 1207 and 1712 of Title 20 of the California Code of Regulations (“CCR”), Sierra Club hereby petitions to intervene in the above-captioned proceeding. This petition is timely pursuant to section 20 CCR 1207(b).

In December 2014, the California Energy Resources Conservation and Development Commission (“Commission”) staff released its Preliminary Staff Assessment (“PSA”) for the Carlsbad Energy Center Project (“project”). In response to the PSA, Sierra Club submitted comments raising concerns regarding the PSA’s analysis of the project’s greenhouse gas (“GHG”) emissions – specifically, the PSA’s failure to consider the retirement of the San Onofre Nuclear Generating Station (“SONGS”) and its finding of no significant impacts resulting from GHG emissions.¹ On February 17, 2015, the Commission staff released its Final Staff Assessment (“FSA”) for the project. In the FSA, Commission staff rejected Sierra Club’s concerns regarding its GHG emissions impacts analysis. Sierra Club now petitions to intervene in this proceeding to assist the Commission’s consideration of this project’s GHG impacts and to allow Sierra Club to represent the interests of its members.

¹ Sierra Club’s January 30, 2015 comments are attached for reference hereto.

II. Representation

Sierra Club will be represented in this proceeding by the counsel identified below. All filings, including service of notices, orders, and other communications and correspondence in the proceeding, should be directed to the following addresses:

Tamara Zakim
Trent Orr
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
Telephone: (415) 217-2000
tzakim@earthjustice.org
torr@earthjustice.org

Matthew Vespa
Sierra Club
85 Second St., 2nd Floor
San Francisco, CA 94105
Telephone: (415) 977-5753
matt.vespa@sierraclub.org

III. Basis for Intervention

a. Description of Petitioner

Sierra Club is a non-profit, member-based, “public benefit” California corporation with over 600,000 members nationwide and more than 145,000 members living in California. Many of Sierra Club’s California members reside in the San Diego area and are affected by the proposed project. Sierra Club is a leader in the effort to reduce California’s and the nation’s dependence on fossil fuels. The highest current priority of Sierra Club’s work is eliminating the need for fossil-fuel-fired power plants through the development of affordable renewable energy and clean integrating resources.

b. Petitioner’s Position and Statement of Interest

Sierra Club brings to this proceeding its and its members’ unique perspectives and

experiences advocating for the rapid de-carbonization of California's energy supply on a trajectory consistent with the latest scientific understanding of the reductions needed to avoid dangerous climate change. By locking in a long-term commitment to carbon intensive generation, Sierra Club is concerned that the proposed project will undermine achievement of the State's objective to reduce greenhouse gas pollution by at least 80 percent below 1990 levels by 2050. (Exec. Order S-03-05.) As described in Sierra Club's January 30, 2015 comments to the Commission in this proceeding, Sierra Club's concerns about GHG emissions are particularly acute in this case given that the project would replace electricity formerly generated by SONGS, a carbon-free power plant.

c. Requested Role in Proceeding

In this proceeding, Sierra Club intends to focus on a single issue, as reflected in its January 30th comments: ensuring that the significance of the project's greenhouse gas impacts is properly analyzed and that all feasible mitigation and alternatives to reduce this impact are adopted. As intervenor, Sierra Club plans to file a brief in this proceeding in response to the Commission's Proposed Decision. Sierra Club may also attend the April 2015 evidentiary hearings and seek judicial notice of a discrete number of documents for the record during the evidentiary hearings. Sierra Club does not plan to present any expert testimony during the evidentiary hearings. Nor does Sierra Club plan to perform cross-examination during the evidentiary hearings, although it reserves the right to do so and expand its review and participation to other issues upon further assessment of project impacts and testimony provided. In sum, Sierra Club's involvement in this proceeding would be relevant while also circumscribed and reasonable.

ATTACHMENT



January 30, 2015

Via Electronic Submission

California Energy Commission
Mike Monasmith
Re: Docket No. 07-AFC-06C
1516 Ninth Street
Sacramento, CA 95814-5512
mmonasmi@energy.state.ca.us

RE: Comments on the California Energy Commission's Carlsbad Energy Center Project Amendment Preliminary Staff Assessment (Docket No. 07-AFC-06C)

Dear Mr. Monasmith:

The following comments are submitted on behalf of the Sierra Club in response to the California Energy Commission's ("Commission") December 2014 Carlsbad Energy Center Project Amendment ("Carlsbad Energy Center" or "project") Preliminary Staff Assessment. The comments herein respond specifically to the assessment's discussion of the project's greenhouse gas ("GHG") emissions and the Commission staff's finding of no significant environmental impact from these emissions. The presiding Committee in this proceeding provided an extension until February 2, 2015 to comment on air quality and public health issues, and these comments are timely pursuant to that extension.¹

The Preliminary Staff Assessment fails to sufficiently consider the retirement of the San Onofre Generation Station ("SONGS") in its environmental analysis of greenhouse gas emission impacts. As a result, its finding of no significant impact is fundamentally flawed. The retirement of the zero GHG emission SONGS in 2013 and its slated replacement by the Carlsbad Energy Center, which will emit greenhouse gases at levels exceeding hundreds of thousands of metric tons of CO₂ per year, warrants a thorough analysis and a finding of significant GHG emission impacts.

1. The Commission Staff's Analysis of Greenhouse Gas Emissions from Carlsbad Energy Center's Operations Fails to Meet CEQA Requirements.

The Commission staff's assessment falls short of basic CEQA compliance because it fails to find that the emission of hundreds of thousands of tons of greenhouse gases from the project's operations is a significant impact. This failure is particularly stark given that the proposed project will replace a zero emission facility with a facility that has emissions upward of 846,896

¹ See Committee Order Denying Terramar's Motion to Postpone the Staff PSA Workshop and Partially Extending the PSA Comment Deadline (Jan. 15, 2015).

MTCO₂E per year.² Rather than discuss the project’s GHG impacts in relation to the zero emission generation of SONGS that is being partially replaced, the assessment concludes simply that the “addition of the amended CECP would contribute to a reduction of California’s GHG emissions” because the project will displace “generation provided by aging, high GHG-emitting power plants.”³ This is inaccurate and misleading, especially absent any discussion that considers the direct relationship between the SONGS closure and the Carlsbad Energy Center amended proposal.

The amended Carlsbad Energy Center project is directly tethered to the retirement of SONGS, a facility that emitted zero GHGs during its decades of operations. Following this Commission’s certification in 2012 of the original 558 MW gross combined-cycle generating Carlsbad Energy Center project, the California Public Utilities Commission (“PUC”) commenced a long-term procurement proceeding (“Track 4”) to address generation shortfalls in the San Diego and Los Angeles basins created by the abrupt and unexpected permanent closure of the 2,200 MW SONGS facility. The PUC noted in its Track 4 decision that “[t]he June 2013 permanent retirement of SONGS ... presented a unique and highly significant event. Until 2012, SONGS had supplied 2,246 MW of greenhouse gas-free base load power to the LA Basin and San Diego and played an important role in system stability in the San Diego Local Area.”⁴

In its final Track 4 decision, in light of the need created by SONGS, the PUC authorized SDG&E to procure between 500 and 800 MW by 2022.⁵ The PUC explained that this authorization was expressly intended “to meet local capacity needs stemming from the retired San Onofre Nuclear Generation Stations.”⁶ Less than four months later, SDG&E submitted an application to the PUC for authority to fill the local capacity requirement need identified in the Track 4 decision by entering into a purchase power tolling agreement with amended project at issue here: the 638 MW peaker facility Carlsbad Energy Center. SDG&E noted in its application that it was “pursuing this PPTA to partially fill the local capacity requirement ... need identified by the Commission in the Track 4 Decision. The retirement of the San Onofre Nuclear Generating Station ... has created a need for new resources to meet SDG&E’s LCR need...”⁷

The Preliminary Staff Assessment acknowledges, in part, that the current amended project is a response to the SONGS retirement when it writes in the project description: “[t]he purpose of the proposed changes is to make the amended CECP conform to current electric energy needs ... and to better respond to the unanticipated retirement of the San Onofre Nuclear

² Carlsbad Energy Center Project Amendment (07-AFC-06C) Preliminary Staff Assessment (“PSA”) Air Quality Appendix, GHG Table 3 (December 15, 2014).

³ PSA Air Quality Appendix, AQ-1, at 1.

⁴ “Decision Authorizing Long-Term Procurement For Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generations Stations” (D.14-03-004) (March 14, 2014) at 9.

⁵ *Id.* at 2.

⁶ *Id.*; see also *id.* at 2-3 (“The procurement authorized by this decision as well as the Track 1 and Pio Pico (D.14-02-016) decisions will offset the retirement of the 2,200 MW SONGS facility and nearly 5,900 MW of once-through cooling plants”).

⁷ See Application of SDG&E for Authority to Partially Fill the Local Capacity Requirement Need Identified in D.14-03-004 and Enter into a Purchase Power Tolling Agreement with Carlsbad Energy Center (July 21, 2014) at 1-2 (attached).

Generating Station.”⁸ However, the unique and highly significant fact of SONGS is not reflected anywhere in the staff assessment’s GHG analysis, nor does the analysis address the impact of the Carlsbad Energy Center’s GHG emissions as measured against the zero GHG emission benefit of the facility that it is replacing.

Rather than acknowledging the close link between SONGS and the Carlsbad project and analyzing the significance of the project’s emissions in relation to SONGS’ zero emissions, the staff chose to substitute its “net reduction” theory for its significance determination. This approach does not constitute a proper analysis under CEQA, which requires that the significance of GHG emission impacts be determined by assessing the extent to which the project may increase GHG emissions “as compared to the existing environment.”⁹ Commission staff writes that “GHG emissions produced by the amended CECP ... are partially or totally offset by reductions in GHG emissions from those generation resources that are displaced, depending on the relative GHG emission rates.”¹⁰ This assumption relies on the notion that when one power plant runs, it will take the place of another facility with higher emissions that otherwise would have operated.¹¹ Much of the assessment’s discussion of GHG impacts focuses on the role of the amended CECP in *future* local generation displacement of less-efficient resources.¹² Yet this logic is misplaced in the context of SONGS replacement. The significance of a project’s impacts can only be ascertained if the agency first establishes an accurate description of the existing physical conditions against which those impacts are to be measured.¹³ Here, the staff’s approach ignores the increase in emissions directly caused by the project – the very thing that must be analyzed in a functionally equivalent CEQA document.¹⁴

The Commission has stated that its significant impacts determination is made without the use of numeric thresholds of significance and instead “in the context of how the project will affect the electricity sector’s emissions based on its proposed role and its compliance with applicable regulations and policies.”¹⁵ On this contextual basis alone, the project’s “proposed role” as a replacement of a zero emission generation source merits a finding of significant impact. Yet, again, the assessment does not discuss GHG volumes that constitute a significant impact or the zero emissions SONGS. This is a critical failure. Moreover, an examination of numeric thresholds of significance used by other California agencies highlights the enormous significance of the GHG emission impact at issue here. The Southern California Air Quality

⁸ See, e.g., PSA Project Description at 3-2.

⁹ See CEQA Guidelines, tit. 14, art. 5, § 15064.4 (in performing an environmental impacts analysis, the significance of GHG emission impacts is determined by assessing the following: (1) the extent to which a project may increase or reduce GHG emissions as compared to the existing environment; (2) whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and (3) the extent to which the project complies with regulations or requirements adopted to implement a statewide, regional or local plan for the reduction or mitigation of GHG emissions).

¹⁰ PSA Air Quality Appendix, AQ-1 at 20.

¹¹ See, e.g., Avenal Energy Project Final Commission Decision, Order No. 09-1216-04 (Docket No. 2008-AFC-01) (December 2009) at 104.

¹² See, e.g., PSA Air Quality Appendix AQ-1 at 22-25.

¹³ See, e.g., *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 655.

¹⁴ CEQA Guidelines, tit. 14, art. 5, § 15064.4(b)(1).

¹⁵ PSA Air Quality Appendix, AQ-1 at 13.

Management District, for example, treats emissions greater than 10,000 metric tons per year of CO2 equivalents from industrial projects as meeting a threshold of significance.¹⁶ The volume of GHG emissions here – 846,000 MTCO2E plus – is exponentially higher than this threshold limit. The California Court of Appeals has itself written that GHG emissions upwards of 898,000 tons are “far from trivial.”¹⁷

An assessment of GHG impacts here must account for the addition of over 846,000 MTCO2E per year of GHG emissions above what was previously a zero emission generation plant. Instead, the staff’s assessment restates the net reduction theory asserted in its 2012 environmental analysis, without taking into account the fact that the project’s GHG emissions are wholly additive to the system when compared to the generation resource it is replacing. A proper assessment must consider SONGS, and consequently warrants a finding that the project’s GHG emission impacts are significant and trigger mitigation requirements.

2. Carlsbad Energy Center Project Interferes with Potential Procurement of Renewable Generation.

In direct contravention of California’s loading order,¹⁸ the Carlsbad Energy Center project forecloses the possibility of integrating environmentally superior outcomes as part of the Track 4 implementation. The PUC’s Track 4 decision authorized SDG&E to procure between 500 and 800 MW of resources, 200 MW of which are limited to energy storage and preferred resources (energy efficiency, demand response and renewables), with the remaining 300 to 600 MW available to “any resource.”¹⁹ The Track 4 decision allowed the 600 MW to be filled by preferred or energy storage resources. By choosing to enter into a contract with the Carlsbad Energy Center, SDG&E precluded preferred resources and energy storage from filling the need created by SONGS’ retirement and authorized by the PUC in its Track 4 decision. Approval of the proposed 600+ MW Carlsbad Energy Center by the PUC and certification by this Commission fills the 600 MW maximum allowable any resource need with fossil fuel generation. The Carlsbad Energy Center’s preclusive effect in undercutting potential Track 4 renewable procurement provides another reason for a finding of significant impact.

Conclusion

For the foregoing reasons, Sierra Club requests that the Commission’s Final Staff Assessment expand its discussion of GHG emission impacts to address the significant increase of

¹⁶ See South Coast Air Quality Management District, A Resolution of the Governing Board of the South Coast Air Quality Management District approving the Interim Greenhouse Gas Significance Threshold To Be Used by the AQMD for Industrial Source Projects, Rules and Plans When It Is the Lead Agency for Projects Subject to the California Environmental Quality Act (2008) at 2.

¹⁷ *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal. App. 4th 70, 91.

¹⁸ See Energy Action Plan (“EAP”) (2003); EAP II (2005) (providing that California’s power supply loading order requires California utilities to obtain their power first from the implementation of all feasible and cost-effective energy efficiency and demands response, and then from renewables and distribution generation, and then finally from efficient fossil-fired generation and infrastructure improvement).

¹⁹ D.14-03-004 at 4, 142-43.

emissions that will result from the replacement of SONGS with gas-fired generation, make a finding of significant impact with respect to the GHG emissions estimated for the project and analyze feasible mitigation measure, as required when the agency makes a significance determination.²⁰

Respectfully submitted,



Tamara Zakim
William Rostov
Earthjustice
50 California Street, Ste. 500
San Francisco, CA 94111
T: 415-217-2000 / F: 415-217-2040
wrostov@earthjustice.org
tzakim@earthjustice.org

Counsel for Sierra Club

²⁰ Pub. Resources Code §§ 21002, 21002.1(b), 21081(a); *see also* CEQA Guidelines, tit. 14, art. 5, § 15021.

DECLARATION OF SERVICE

I, Rikki Weber, declare that on February 20, 2015, I served and filed copies of the PETITION TO INTERVENE BY SIERRA CLUB dated February 20, 2015. The most recent Proof of Service List, which I copied from the web page for this project at: <http://www.energy.ca.gov>, is attached to this Declaration.

(Check one)

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California Energy Commission – Docket Unit
Attn: Docket No. 07-AFC-6C
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: February 20, 2015

/s/ RIKKI WEBER

Rikki Weber

Proof of Service List

Docket: 07-AFC-06C

Project Title: Carlsbad Energy Center - Compliance

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Applicant

George L. Piantka, PE,
Director, Environmental
Services
NRG Energy, West Region
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
george.piantka@nrgenergy.com

Applicant Representative

John A. McKinsey
Locke Lord, LLP
500 Capitol Mall, Suite 1800
Sacramento, CA 95814
jmckinsey@lockelord.com

Applicant Consultant

Robert Mason, Project
Manager
CH2MHill
6 Hutton Centre Drive, Suite
700
Santa Ana, CA 92707
robert.mason@CH2M.com

Intervenor

Arnold Roe, Ph.D
Power of Vision
3210 Piragua Street
Carlsbad, CA 92009
roe@ucla.edu

Julie Baker
Power of Vision
4213 Sunnyhill Drive
Carlsbad, CA 92008
visioncarlsbad@gmail.com

Kerry Siekmann
Terramar Association
5239 El Arbol Drive
Carlsbad, CA 92008
siekm1@att.net

Rob Simpson
27126 Grandview Avenue

Hayward, CA 95542
rob@redwoodrob.com
Robert Sarvey
501 Grant Line Road
Tracy, CA 95376
sarveybob@aol.com

Commission Staff

efiling archive
California Energy Commission
Sacramento, CA
efilingPOSarchive@energy.ca.gov

Gabriel Vivas, Staff Counsel
California Energy Commission
Office of the Chief Counsel,
1516 Ninth Street, MS-14
Sacramento, CA 95814
gabriel.vivas@energy.ca.gov

Kerry Willis, Staff Counsel
California Energy Commission
Office of the Chief Counsel,
1516 Ninth Street, MS-14
Sacramento, CA 95814
kerry.willis@energy.ca.gov

**Mike Monasmith, Senior
Project Manager**
California Energy Commission
Siting, Transmission &
Environmental Protection
Division, 1516 Ninth Street,
MS-15
Sacramento, CA 95814
mike.monasmith@energy.ca.gov

Richard Ratliff, Staff Counsel
California Energy Commission
Office of the Chief Counsel,
1516 Ninth Street, MS-14
Sacramento, CA 95814
dick.ratliff@energy.ca.gov

Committee

ANDREW McALLISTER,
Associate Member,
Commissioner
California Energy Commission
Sacramento, CA

Eileen Allen, Commissioners'
Technical Adviser for Facility
Siting
California Energy Commission
Sacramento, CA

Hazel Miranda, Adviser to
Commissioner McAllister
California Energy Commission
Sacramento, CA

Jennifer Nelson, Adviser to
Commissioner Douglas
California Energy Commission
Sacramento, CA

KAREN DOUGLAS,
Presiding Member,
Commissioner
California Energy Commission
Sacramento, CA

Patrick Saxton, Adviser to
Commissioner McAllister
California Energy Commission
Sacramento, CA

Paul Kramer, Chief Hearing
Officer
California Energy Commission
Sacramento, CA

Public Adviser

Alana Mathews, Public
Adviser
California Energy Commission
Public Advisers Office, 1516
Ninth Street, MS-12
Sacramento, CA 95814
publicadviser@energy.ca.gov