

DOCKETED

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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
Petitions to Amend the) **Docket No. 07-AFC-06C**
Carlsbad Energy Center Project) **STAFF'S PREHEARING CONFERENCE**
) **STATEMENT**

On February 23, 2015, the Energy Commission Committee (Committee) assigned to conduct proceedings on the Petitions to Amend the Carlsbad Energy Center Project issued a Notice of Prehearing Conference and Evidentiary Hearing, Scheduling Order, and Further Orders. In the Notice, the Committee set the date for the Prehearing Conference as March 18, 2015, and ordered each party planning to participate in the Prehearing Conference to serve and file a Prehearing Conference Statement.

Staff is prepared at this time to proceed to evidentiary hearings in all topic areas. On February 17, 2015, Staff issued its Final Staff Assessment (FSA). Once the San Diego Air Pollution Control District issues its Final Determination of Compliance, Staff may issue a supplement to the FSA.

On March 9, 2015, the Committee extended the testimony deadline until March 12, 2015. Staff reserves the right to revise its estimates for direct and/or cross-examination at the Prehearing Conference after reviewing any testimony filed subsequent to preparing this statement.

1. Issues in which there are disagreements among the parties.

- A. Air Quality. In their comments and filings, and in workshops, intervenors have identified several issues in the area of Air Quality. Some of the expressed concerns and comments go to the issue of the air district "baseline" for historical air emissions from the Encina Power Station, and whether the years chosen by the air district are the most appropriate years. This baseline issue pertains to

whether a federal Prevention of Significant Deterioration (PSD) permit will be required for the project, an issue which is outside the purview of the Energy Commission, irrelevant to its decision, and that is ultimately decided by the air district with EPA Region 9 review. Staff encourages the Committee to limit testimony and cross-examination to issues pertinent to its decision. Even so, other issues that are relevant have been raised by intervenors that should be the subject of hearings.

- B. Climate (GHG) Emissions. Sierra Club, Helping Hand Tools, and possibly other intervenors have raised the Staff analysis and conclusion of no significant impact as one they will contest. Staff anticipates the need for witnesses on this issue.
- C. Visual Resources. Intervenor Power of Vision (POV) has raised issues regarding the visual impact of the project and mitigation measures, particularly with regard to views of transmission poles on the project site from the freeway, and perhaps other Key Observation Points. These issues will likely require adjudication by witness testimony.
- D. Transmission System Engineering. The testimony in this area has raised no questions, but the subject may be implicated by the Visual Resources issue to the extent it involves discussion of feasible mitigation of visual impacts of transmission poles.
- E. Alternatives. Most of the comments and workshop discussion on Alternatives concerned the issue of whether the California Public Utilities Commission (CPUC) should be finding gas-fired generation, or the project's proposed amount of gas-fired generation, "needed" such that the CPUC would approve a Power Purchase Agreement for the project. This issue of project "need" is not within the purview of the Energy Commission, and is being vigorously litigated in the CPUC forum. Accordingly, the Committee should caution the parties that "need" is not determined in this amendment proceeding, and that it will not allow hearing time to be used to separately litigate an issue that by law is resolved in a different forum. Alternatives, including location alternatives, were subject to lengthy analysis in the prior licensing proceeding. Although certain details have changed, the fundamental conclusions do not. The Committee should evaluate

whether there are fundamental issues raised by the parties that are within the purview of the Energy Commission that will benefit from holding additional hearings on project alternatives.

- F. Noise. Comments from Intervenor Terramar and POV complained that the noise analysis in the Preliminary Staff Assessment was too conclusory. Staff has augmented the analysis in the Final Staff Assessment in response to such comments, and believes that these issues have now been addressed.
- G. Land Use. The main issues raised by Terramar concern whether the Coastal Commission should provide a separate report in this amendment proceeding, and whether the project is consistent with the Coastal Act. These are legal issues that were addressed fully in the prior proceeding, and do not involve any issue of fact that requires resolution by witness testimony. Staff believes that issues in this area are best addressed by briefing rather than the use of hearing time.

Staff's Exhibit List

Exhibit Number	TN # /Document
2000	TN # 203696: Carlsbad Energy Center Project Amendment, Final Staff Assessment, docketed 2/17/15.
2001	TN # XXXXXX: Supplemental Final Staff Assessment, docketed 3/X/15
2002	TN# XXXXXX: San Diego Air Pollution Control District, Final Determination of Compliance, docketed 3/X/15.
2003	TN# 203558: City of Carlsbad General Plan, Land Use Element, docketed 1/22/2015.
2004	TN# 203557: City of Carlsbad Zoning Ordinance, P-U Zone, docketed 1/22/2015.
2005	TN# 203556: City of Carlsbad Noise Standard, docketed 1/22/2015.

2006	TN# 203555: City of Carlsbad Agua Hedionda Land Use Plan, docketed 1/22/2015.
2007	TN# 203550: Agenda Bill and Precise Development Plan 00-002(F), docketed 1/22/2015.

2. Staff's list of witnesses.

If the Committee determines it is necessary, the following witnesses will be available to testify at the evidentiary hearings. The topics and witnesses are grouped in panels which Staff believes will serve to address any remaining issues in the most efficient manner. The qualifications for each witness are included in the Final Staff Assessment. Staff is adding to the Land Use panel, Eric Knight, Office Manager, Environmental Office, Siting, Transmission, and Environmental Protection Division. A copy of his resume and declaration is attached.

- Air Quality/GHG: William Walters, David Vidaver
- Visual Resources/ TSE: William Kanemoto, Mark Hesters
- Alternatives: Steven Kerr, Jeanine Hinde, David Vidaver
- Noise & Vibration: Joseph Hughes, Ed Brady, Shahab Khoshmashrab
- Land Use: Michael C. Baron, Eric Knight

3. Witnesses that may testify by telephone.

At this time, Staff does not anticipate any witnesses testifying by telephone.

4. Staff's cross-examination.

Staff does not plan to cross-examine the Petitioner, and at this writing, is unaware of any intervenor witnesses. Staff reserves the right to add cross-examination time once it has reviewed intervenor testimony.

5. Staff's recommendation about formal/informal process.

For each topic, Staff's witnesses are amenable to sitting as a panel with the Petitioner's witnesses and/or other parties' witnesses. Staff would request an opportunity for a brief direct examination and a brief cross-examination if necessary.

6. Issues that may require legal argument or briefing.

Staff does not anticipate that any topic areas will require legal argument or briefing.

7. Is it productive to have oral argument at the beginning or end of the hearings?

At this time, Staff does not believe it will be productive for opening or closing oral argument.

8. Time estimated for direct, rebuttal, cross-examination and oral argument.

Staff does not intend to cross-examine other parties' witnesses at this time; however, Staff requests 10 minutes per witness for direct examination and reserves an additional 10 minutes for cross-examination or rebuttal testimony as needed.

9. List of Documents Staff requests the Committee take official notice.

Staff requests the Committee take official notice of all of Staff's exhibits from the licensing proceeding (07-AFC-06), which are Exhibits 200-217; the Reporter's Transcripts for the Evidentiary Hearings held on February 1, 2, 3, and 4, 2010, and Exhibit 443, Testimony of City of Carlsbad and the Carlsbad Housing and Redevelopment Agency.

Staff's Response to Robert Simpson's Motion to Delay All Activity in this Proceeding until April 10, 2015.

Robert Simpson filed a motion to delay all activity in this proceeding until April 10, 2015. He requests the delay in order to have time to review the San Diego Air Pollution Control District's Final Determination of Compliance (FDOC) and the California Public Utility Commission's [CPUC] Proposed Decision Denying without Prejudice San Diego Gas and Electric Company's Application for Authority to Enter into Purchase Power Tolling Agreement with Carlsbad Energy Center, LLC.

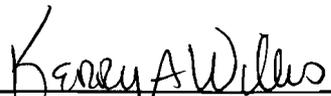
Staff opposes Mr. Simpson's motion. First, it is Staff's understanding that the FDOC will be released by March 13, 2015, giving all parties sufficient time to review the document before the hearings on April 1-2, 2015. Second, the final CPUC decision is not required for the Energy Commission to continue its proceeding on the Petitions to Amend the Carlsbad Energy Center. In past proceedings, the Energy Commission has not required a power purchase agreement to license a power plant, and the CPUC

Proposed Decision concurs. As the Proposed Decision states: "While the Commission [CPUC] has considerable discretion over whether to approve a power purchase contract, it does not have the power to approve or deny the underlying generation project. The project underlying the power purchase contract could proceed regardless of the Commission's [CPUC] decision." (Proposed Decision at 30.)

Therefore, Staff respectfully requests the Committee deny Mr. Simpson's motion to delay these proceedings.

DATED: March 12, 2015

Respectfully submitted,



RICHARD RATLIFF
Staff Attorney IV
KERRY A. WILLIS
Senior Staff Counsel

**DECLARATION OF
ERIC KNIGHT**

I, **Eric Knight** declare as follows:

1. I am presently employed by the California Energy Commission in the Environmental Office of the Energy Facilities Siting Division as an Energy Resources Specialist III (Managerial).
2. A copy of my professional qualifications and experience is attached hereto and incorporated by reference herein.
3. I helped prepare the staff testimony on Land Use, for the Petitions to Amend the Carlsbad Energy Center (07-AFC-06C) based on my independent analysis of the Petitions to Amend and supplements hereto, data from reliable documents and sources, and my professional experience and knowledge.
4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue addressed therein.
5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: March 11, 2015

Signed: 

At: Sacramento, California

Eric Knight

Civil Service Classification: Energy Resources Specialist III (Managerial)

Professional Experience

Over 16 years of experience in permitting of energy facilities and preparing environmental documentation in compliance with the California Environmental Quality Act (CEQA).

Environmental Office Manager

*Siting, Transmission, and Environmental Protection Division, CA Energy Commission
August 2009-present*

Responsible for planning, organizing and directing the activities of the staff of the Environmental Office. Office staff are primarily responsible for preparing environmental impact analyses in the areas of land use, transportation, visual resources, socioeconomics, alternatives, biological resources, and cultural resources as required by CEQA, for thermal electric generating facilities (50 MWs and greater) and related facilities (including electric transmission lines and natural gas and water supply pipelines); identifying feasible measures to mitigate significant impacts; and providing expert witness testimony at evidentiary hearings. Responsible for quality control of all Office work products, including ensuring staff's analyses are complete, accurate, and defensible. Advise the Division Deputy Director, Executive Director, and Commissioners on a broad range of issues related to energy facility siting and the Office's responsibilities. Represent the Office/Siting Division in meetings, workshops, and hearings with energy facility applicants, project owners, intervenors, federal, state, and local agency representatives, Native American tribes, interest groups, Commissioners, and the public. Review and analyze proposed legislation related to the Division's programs.

Siting & Dockets Office Manager

*Siting, Transmission, and Environmental Protection Division, CA Energy Commission
June 2008-August 2009*

Responsible for planning, organizing and directing the activities of the staff of the Siting & Dockets Office, which included project managers and project assistants assigned to power plant licensing cases and the staff responsible for maintaining the Energy Commission's regulatory and non-regulatory official records (Dockets). The Siting Office is responsible for coordinating the environmental and engineering assessments of proposed energy facilities conducted by the technical offices (Environmental, Engineering, and Transmission) of the Siting Division. Advised the Division Deputy Director, Executive Director, and Commissioners on a broad range of issues related to energy facility siting and the Office's responsibilities. Represented the Office/Siting Division in meetings, workshops, and hearings with energy facility applicants, intervenors, federal, state, and local agency representatives, interest groups, and the public.

Siting Program Manager

*Energy Facilities Siting Division, Siting & Compliance Office, CA Energy Commission
February 2008-June 2008*

Responsible for managing the Energy Facilities Siting Program and supervising and directing the work of project managers overseeing the Siting staff's review and analysis of power plant siting cases. Represented the Division in meetings, workshops, and hearings with project applicants, intervenors, federal, state, and local agency representatives, interest groups, and the public. Advised the Siting & Compliance Office Manager and Deputy Director on technical, procedural, and legislative issues.

Community Resources Unit Supervisor

*Energy Facilities Siting Division, Environmental Office, CA Energy Commission
January 2007-February 2008*

As the supervisor and technical senior, was responsible for supervising and directing the work of technical staff in the Community Resources Unit and consultants performing environmental impact assessments of power plants and related facilities as required by CEQA and the Warren-Alquist Act. The Unit was responsible for preparing environmental impact assessments in the areas of land use/agricultural resources, traffic and transportation, visual resources, and socioeconomics; identifying feasible measures to mitigate significant impacts and ensure compliance with applicable laws, ordinances, regulations and standards; and presenting expert witness testimony at evidentiary hearings. Responsible for quality control of products originating from the Unit, including ensuring staff's analyses were complete, accurate and defensible, and completed on schedule. As the Unit senior, was responsible for completing the most complex analyses and addressing the most difficult technical issues related to the Unit's responsibilities. Advised the Environmental Office Manager and Division Deputy Director on technical, procedural, and legislative issues.

Energy Commission Specialist II

*Special Projects Office, Fuels & Transportation Division, CA Energy Commission
July 2006-January 2007*

Provided recommendations on complex, sensitive, and technical problems related to energy infrastructure assessments, particularly liquefied natural gas (LNG) projects. Responsible for leading the Special Projects Office's LNG assessment activities. Responsible for briefings for management, Commissioners (Natural Gas Committee), and the LNG Interagency Working Group on LNG assessment activities and projects. Responsible for preparing reports, correspondence, and presentations related to LNG proposals. Represented the Energy Commission at the "LNG: When East Meets West - The Unfolding of the LNG Trade in the Pacific" conference.

Project Manager

*Energy Facility Siting Division, Siting Office, CA Energy Commission
November 2004-July 2006*

Responsible for managing the Siting Division staff's review and analysis of Applications for Certification to construct and operate thermal electric power plants and related facilities. Responsible for briefings for the Executive Director, Division Deputy Director, Office Managers, Supervisors, and technical staff on the schedule, strategy, progress, and issues throughout the siting case. Provided direction to project team members and was responsible for ensuring quality control on all published staff products, including the staff's assessment covering 23 environmental and engineering technical disciplines. Responsible for organizing, scheduling, and conducting public workshops and preparing correspondence.

Environmental Planner

*Energy Facility Siting Division, Environmental Office, CA Energy Commission
October 1998-November 2004*

Primarily responsible for preparing independent analyses of the visual, land use, and transportation impacts of power plant projects and related facilities. Evaluated project compliance with applicable laws, ordinances, regulations and standards, and identified feasible measures to mitigate significant adverse impacts as required by CEQA. Other duties included preparing data requests, conducting field visits, participating in public workshops, preparing written testimony, presenting expert witness testimony at hearings before the Commissioners, and monitoring compliance with conditions of certification in the Final Commission Decision.

Assistant Project Manager

*Energy Facility Siting Division, Siting & Permit Assistance Unit, CA Energy Commission
June 1995-October 1998*

Worked with project manager to promote the use of an urban planning tool emphasizing energy efficiency by local governments. Authored a chapter to the National Wind Coordinating Committee's handbook *Permitting of Wind Energy Facilities*. Assisted in the preparation of several Energy Commission publications, including the *Energy Aware Planning Guide II: Energy Facilities* and *The Energy Yardstick: Using PLACE³S to Create More Sustainable Communities*.

Program Technician

*California Department of Toxic Substances Control
June 1994-June 1995 (Student Assistant, March 1993-January 1994)*

Provided regulatory assistance to hazardous waste generators, transporters and storage facility operators. Compiled an instructions manual for telephone hotline staff to refer to

while assisting hazardous waste handlers and the general public. Issued identification numbers to hazardous waste generators. Entered facility information into the department's database of hazardous waste handlers.

Student Intern

Sacramento Valley Toxics Campaign

January 1992-June 1992

Filed public record requests with state and federal agencies. Conducted research and authored an article for the campaign newsletter. Helped to organize community meetings, press conferences and public outreach events.

Education

Bachelor of Arts – Environmental Studies, California State University, Sacramento, 1993

Minor – Government, CSUS, 1993

Professional Education (Partial List)

Expert Witness and CEQA Training, CEC Chief Counsel's Office, 2014 and 2011

EIR/EIS Preparation and Review, UC Davis Extension, October 2009

Defensible CEQA Documents, Lorman Education Services, August 2007

Airports and Land Use Compatibility Planning, UC Davis Extension, April 2007

Managing LNG Risks, ioMosaic Corporation, November 2006

Applied Project Management, DTS Training Center, May 2006

CEQA Workshop, Association of Environmental Professionals, Feb. 2004 and 1999

CEQA Overview and Update, UC Davis Extension, June 1998

Land Use Planning for Environmental Professionals, UC Davis Extension, May 1996

Introduction to ArcView and Avenue (GIS), ESRI, August 1995 and May 1998