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STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

Petitions to Amend The
CARLSBAD ENERGY CENTER PROJECT

DOCKET NO. 07-AFC-06C

CARLSBAD ENERGY CENTER LLC'S
PREHEARING CONFERENCE STATEMENT

March 13, 2015

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CARLSBAD ENERGY CENTER LLC'S
PREHEARING CONFERENCE STATEMENT AND EXHIBIT LIST

On February 23, 2015, the Committee assigned to this proceeding issued a Notice of Prehearing Conference and Evidentiary Hearing, Scheduling Order and Further Orders (“Notice and Order”). The Notice and Order directed all parties to file a Prehearing Conference Statement and Exhibit List (“Prehearing Conference Statement”) no later than 3:00 p.m. on March 13, 2015. On March 10, 2015, the Committee’s Hearing Advisor issued a second notice wherein it was requested that all parties respond to intervenor Robert Simpson’s motion to delay these proceedings either in their Prehearing Conference Statement or in a separate document filed prior to the Prehearing Conference. Accordingly, Carlsbad Energy Center LLC (“Project Owner”) herein provides its Prehearing Conference Statement and its response to the motion to delay.

I. ISSUES FOR EVIDENCE OR TESTIMONY

Project Owner anticipates that there will be a need to present evidence and testimony on the following issues:

A. Air Quality

Many of the intervenors in this matter have identified issues related to air quality and greenhouse gas emissions as areas in which they disagree with Staff’s findings of no significant impacts. Project Owner fully supports Staff’s findings of no significant impacts and will be prepared to present evidence and testimony on those topics, if necessary, at the Evidentiary Hearing.

B. Noise and Vibration

To effectively manage compliance with Noise and Vibration conditions of certification (“COCs”), Project Owner requests that the Committee consider a change to the framework for determining what constitutes “noisy construction work” under NOISE-6. Project Owner has already submitted written testimony on this issue, but will be prepared to present oral testimony on this topic at the Evidentiary Hearing if necessary.

C. Visual Resources / Transmission Systems Engineering

Project Owner fully supports Staff's finding that the project has no significant impacts on visual resources. Project Owner recognizes that Power of Vision, an intervenor in this proceeding, has raised issues regarding the visual impacts of this project and its transmission systems. Therefore, Project Owner will be prepared to present evidence and testimony on these topics at the Evidentiary Hearing if necessary.

Additionally, in its written testimony, Project Owner advocated the removal of language in a COC that was added in the Final Staff Assessment ("FSA"). Project Owner requests that the Committee eliminate the requirement that the buffer-zone described in the I-5 widening mitigation plan be a minimum of twenty feet wide. Project Owner will be prepared to present oral testimony on this topic at the Evidentiary Hearing if necessary.

D. Traffic and Transportation

In response to the concerns of an intervenor in this matter, Staff altered a COC in the FSA to prohibit large vehicles from exiting via the San Diego Gas & Electric ("SDG&E") Exit Gate to travel east on Canon Road. Project Owner requests that the Committee take an alternate approach by instead requiring Project Owner to incorporate safety considerations related to such turns into the construction / demolition traffic control plan. Project Owner has already provided written testimony on this issue, but will be prepared to offer oral testimony on this topic at the Evidentiary Hearing if necessary.

E. Other Topics

Project Owner has summarized what it believes to be the most likely areas of focus during the evidentiary hearings. However, Project Owner reserves the right to present evidence and offer testimony at the Evidentiary Hearing on other topics if necessary.

II. WITNESSES AND EVIDENCE

Project Owner intends to present the following witnesses:

- Gary Rubenstein, B.S., Engineering (resume TN-203811, pp. 8 – 10)
- Christopher Scott Seipel, B.S., Geology (resume TN-203811, pp. 13 – 17)
- Robert Mason, M.A., Urban and Regional Studies (resume TN-203811, pp. 26 – 28)
- Thomas Priestley, Ph.D., Environmental Planning (resume TN-203811, pp. 33 – 34)
- Erik Hale, B.S., Electrical Engineering (resume TN-203811, pp. 37-38)

Project Owner intends to introduce the evidence listed in the Exhibit List below during the Evidentiary Hearing.

EXHIBIT LIST

Exhibit Number	TN # / Document
1000	TN-202287-2: Petition to Amend Carlsbad Energy Center Project, docketed May 2, 2014
1001	TN-202287-3: Petition to Amend Carlsbad Energy Center Project Part 2, docketed May 2, 2014
1002	TN-203441: Preliminary Determination of Compliance, docketed December 12, 2014
1003	TN-203696: Final Staff Assessment, docketed February 17, 2015
1004	TN-203608: Applicant's Analysis of Baseline Period Chosen for CECP, docketed February 5, 2015
1005	TN-203058: Responses to Power of Vision Data Request Set 1 (Nos. 1 – 5), docketed September 12, 2014
1006	TN-203084: Project Owner's Supplemental Responses to Data Requests in Set One (Nos. 28 – 30), docketed September 19, 2014
1007	TN-203311: Project Owner's Response to Data Request Set 2 (No. 58), docketed November 4, 2014
1008	TN-203300: Project Owner's Response to Data Request Set 3 (Nos. 67 – 84), docketed October 31, 2014
1009	TN-203313: Project Owner's Supplemental Response to Data Request Set 3 (No. 74), docketed November 4, 2014
1010	TN-203363: Project Owner's Response to Data Request Set 4 (Nos. 86 – 92), docketed November 21, 2014
1011	TN-202938: Project Owner's Response to Data Request Set 1 (Nos. 1 – 30), docketed August 15, 2014
1012	TN- 203383: Project Owner's Response to Power of Vision Petition for Order Directing Responses to Data Requests 8, 9, and 11 – 13, docketed November 26, 2014
1013	TN-203327: Project Owner's Supplemental Response to Data Request Set 3 (No. 76), docketed November 13, 2014
1014	TN-203512: Project Owner's Response to Committee Order & Supplemental Response to Data Request Set 3, docketed January 12, 2015

III. TELEPHONE WITNESSES

At this time, Project Owner does not intend to present any telephonic witnesses. However, Project Owner would like to reserve the right to present a telephonic witness if a subsequent change in circumstances warrants such method of testimony.

IV. WITNESSES OF OTHER PARTIES

At this time, Project Owner does not intend to question the witnesses of other parties. Depending on the positions taken by other parties, including California Energy Commission (“CEC”) Staff, on requested changes to some COCs and other issues of importance, Project Owner reserves the right to ask questions of other parties’ witnesses (if an informal hearing procedure is used) or cross-examine other parties’ witnesses (if a formal hearing procedure is used).

V. TESTIMONY PROCESS RECOMMENDATIONS

Project Owner recommends that the Committee use the informal hearing procedure described in the Notice and Order for all topics addressed at the Evidentiary Hearing.

VI. LEGAL ARGUMENT OR BRIEFING RECOMMENDATIONS

At this time, Project Owner does not anticipate that any issues raised during the Evidentiary Hearing will require legal argument or briefing.

VII. ORAL ARGUMENT RECOMMENDATIONS

Project Owner does not believe that opening or closing oral arguments are necessary at the Evidentiary Hearing.

VIII. TIME ESTIMATES

A. Direct Testimony

- Air Quality – 10 minutes
- Noise – 5 minutes
- Visual Resources – 5 minutes
- Transmission Systems Engineering – 5 minutes
- Traffic and Transportation – 5 minutes

B. Rebuttal Testimony / Cross-examination

Project Owner does not believe that it will need to provide rebuttal testimony or to cross-examine witnesses. However, in the event that it is necessary, Project owner would like to reserve a combined 25 minutes of rebuttal / cross-examination time across all categories.

C. Oral Argument

Project Owner does not believe that oral argument is necessary to this proceeding.

IX. DOCUMENTS FOR OFFICIAL NOTICE

Project Owner does not intend to request that the Committee take official notice of any documents.

X. PROJECT OWNER'S RESPONSE TO THE MOTION TO DELAY

On March 9, 2015, Intervenor Robert Simpson filed a motion to delay all activity in this proceeding until April 10, 2015 (“the Simpson Motion”). Mr. Simpson argues that such a delay is warranted because: (1) the San Diego Air Pollution Control District’s (“SDAPCD’s”) Final Determination of Compliance (“FDOC”) has yet to be released; and (2) the earliest date the California Public Utility Commission (“CPUC”) can hold a hearing on a proposed decision denying SDG&E’s application for authority to enter into a power purchase tolling agreement (“PPTA”) with Project Owner is April 9, 2015.

Project Owner opposes the Simpson Motion. The deadlines set forth in the Notice and Order are typical, reasonable, and fair for the siting process of the California Energy Commission. Furthermore, the Scheduling Order and modifications thereof affirm the time sensitivity and importance of the project in addressing critical need resulting from the loss of approximately 2,200 MW with SONGS’ retirement and the planned retirement of all 965 MW of Encina’s once-through cooled generation by December 31, 2017, in compliance with the State’s Once Through Cooling (“OTC”) Policy. The Simpson Motion requests scrapping those deadlines in response to events occurring in separate proceedings before the CPUC and the SDAPCD. Those proceedings, though they share some related aspects to the proceeding before the CEC, follow separate processes. As explained below, Project Owner does not believe that the events cited in the Simpson Motion provide a proper basis for delay in this proceeding. Accordingly, Project Owner respectfully requests that the Committee deny the Simpson Motion.

As to Simpson’s first argument, it is Project Owner’s understanding that the release of the FDOC is imminent. Regardless of whether the FDOC is released as projected on March 13, 2015, or a few days before or after the Prehearing Conference, the parties will have the time necessary to review the document ahead of the Evidentiary Hearing and to prepare accordingly.

However, if the FDOC is not made available prior to the Evidentiary Hearing, Project Owner would like to note a point made by Terramar Association (“Terramar”) in its written testimony. Terramar addressed the lack of an FDOC by “remind[ing] the Committee and Staff that CEQA requires [that the FDOC] must be filed before reaching a conclusion.” (TN-203851, p. 4) Project Owner agrees with Terramar’s assessment. Before the CEC can reach a conclusion to its CEQA-equivalent process, the SDAPCD must have issued the FDOC and the FDOC must have been considered by the CEC. However, neither the FSA nor the Evidentiary Hearing represents the conclusion of the CEC’s CEQA-equivalent process. Rather, they are steps towards the conclusion. Therefore, the FDOC is not a necessary precursor to the Evidentiary Hearing. Nothing in the statutes or regulations that governs the CEC’s siting process prohibits the agency

from completing evidentiary hearings prior to the issuance of the FDOC provided that the FDOC does not include previously unknown “information of substantial importance” or certain other enumerated factors (TN-203851, p. 4 citing FSA Executive Summary’s discussion of Cal. Code Regs., tit. 14 § 15162). Further, nothing in the regulations or statutes that govern the CEC’s siting process prohibits the CEC from holding multiple evidentiary hearings if necessary. Even if the FDOC is not available by the time of the Evidentiary Hearing prescribed in the Notice and Order, its unavailability is not sufficient excuse for a delay. Nonetheless, we anticipate the FDOC will be available on March 13, 2015.

As to Simpson’s second argument, the current status of the CPUC proceeding to give SDG&E the authority to enter into a PPTA with Project Owner is that a proposed decision, with no binding legal effect, has been entered by an administrative law judge (“ALJ”). (*See* transmission letter accompanying the proposed decision, “[u]ntil and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect.” (TN-203789, transmission letter)). As noted by the Simpson Motion, the soonest the Commission can take action is the April 9th CPUC business meeting. (TN-203801, p. 2). However, there is no guarantee that CPUC will issue a final decision at that point, or even take any action on this item. No specific timeframe has been provided in which a final action will be taken that could potentially inform this proceeding.

More significantly, CPUC approval of a PPTA is NOT NECESSARY for the CEC’s siting process. While CPUC has “considerable discretion over whether to approve a power purchase contract, it does not have power to approve or deny the underlying generation project.” (TN-203789, p. 30). In other words, the decision of CPUC in regards to a particular power purchase agreement does not impact the ability of the CEC to either approve or deny the Petition to Amend that sits before it. The Presiding Member’s Proposed Decision (“PMPD”) does not require consideration of whether the applicant / petitioner has entered into a binding PPTA. (*See* Cal. Code Regs., tit. 20, § 1752 *et seq.*). The existence of a power purchase agreement is not a pre-requisite of CEC approval. In fact, as Staff points out in their Prehearing Conference Statement, “[i]n past proceedings, the Energy Commission has not required a power purchase agreement to license a power plant.” (TN-203858, p. 6). Both the ALJ and the CEC Staff agree that the CEC can license the Project Owner’s underlying generation project regardless of what action CPUC takes with respect to the ALJ’s proposed decision.

Therefore, Project Owner respectfully requests that the Committee deny the Simpson Motion and allow the Evidentiary Hearing to proceed as scheduled on April 1 – 2, 2015.