

DOCKETED

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Project Title:	Carlsbad Energy Center - Compliance
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Terramar’s Rebuttal Testimony submitted for the ACECP Hearing

List of Rebuttal Exhibits

3039	203845	3/11/15	City of Carlsbad Testimony
3040	203858	3/12/15	Staff's Prehearing Conference Statement
3041	203811	3/10/15	Project Owner's Written Testimony
3042	203941	3/24/14	Email Conversation with Jessica Jones

Rebuttal Testimony

Alternatives/Land Use

It is clear from City of Carlsbad testimony that the CEC will need to declare an “override” due to the Agua Hedionda 35-foot height limit that the project will exceed. City of Carlsbad Testimony provided by Asst. City Manager, Gary Barbario, pages 6-7, Exhibit 3039, TN 203845, docketed 3/11/15;

Q8. With regard to the LORS override of the 35-foot height limit, what is the City’s current position?

A8. As noted above, the 35-foot height limit is the one city requirement for which the amended CECP is not in conformance. The city is not interested in amending or eliminating this standard as it is important in maintaining the city’s character and visual profile in the Agua Hedionda segment of the city’s Coastal Zone and would also require review and approval by the California Coastal Commission. The city agrees with CEC Staff that an “override” of this requirement is appropriate because of the numerous public benefits the project now provides. The amended CECP now conforms to Carlsbad Fire Department requirements, reduces the visual and other environmental impacts of the licensed CECP, provides for the demolition of the existing EPS by a date certain, eliminates blight in the area and provides electric system reliability in light of the removal of the EPS and closure of San Onofre. We believe the amended CECP project will provide extraordinary public benefits to the city and its residents and visitors. Due to this conclusion the City supports the override.

Once an “override” has been made then “need” must be addressed for the project. The Public Resources Code Section 25525 supports Terramar’s contention that “need” must now be discussed;

25525. The commission may not certify a facility contained in the application when it finds, pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that the facility is required for public

convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. The commission may not make a finding in conflict with applicable federal law or regulation. The basis for these findings shall be reduced to writing and submitted as part of the record pursuant to Section 25523

Yet in Staff's Prehearing Conference Statement, Exhibit 3040, TN203858, March 12, 2015 on page 3 in the Alternatives section staff states "need" cannot be discussed;

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.

Terramar disagrees with Staff's assessment of the "need" issue.

There are two reasons that the issue of "need" must be discussed in the Hearings:

- 1) The necessary override requires the discussion of whether the project is required for public convenience and necessity.
- 2) The required reason for the amendment to the CECP as discussed by CEC staff;

California Code of Regulations, title 20, sections 1769(a)(1)(B) and 1769(a)(1)(C) of the California Energy Commission (Energy Commission) Siting Regulations, require a discussion of the necessity for the proposed changes to the project and per Executive Summary page 1-3, Exhibit 3003 that staff has listed as Meet the commercial qualifications for long-term power contract opportunities in Southern California.

- *Meet the commercial qualifications for long-term power contract opportunities in Southern California.*

Therefore, if necessary, Terramar would like to make a motion that the CEC Committee allow "need" issues incorporated where appropriate. Due to the required "override" ,

this discussion is in the purview of the ACECP Hearing according to Public Resources Code Section 25525.

Noise

On page 11 of the Project Owner's Written Testimony, Exhibit 3041, TN203811, docketed 3/10/15, a suggestion is made that certain verbage be deleted from Noise Condition 6.

A project- related noise complaint constitutes either: a violation by the project of any noise condition of certification, which is documented by an individual or entity affected by such noise or vibration; or a complaint that is confirmed by the CPM, the project owner, or any local or state agency that would, but for the exclusive jurisdiction of the Energy Commission, otherwise have the responsibility for investigating noise complaints or enforcing noise mitigation.

Terramar disputes the suggested changes made by the Project Owner as they diminish complaints made by individuals regarding noise and vibration.

Terramar would also like to keep the word "verified" instead of the Project Owner's suggestion of "determined".

Waste Management

On page 19 of the Project Owner's Written Testimony, Exhibit 3041, TN203811, docketed 3/10/15, a suggestion is made that the Project Owner not be required to use the recycling facility within the city limits of San Diego.

Terramar would like to point out that if the Project Owner would like to travel farther to recycle their construction debris elsewhere, then the additional GHG's created should be considered a part of the project.

Traffic and Transportation

On page 21 of the Project Owner's Written Testimony, Exhibit 3041, TN203811, docketed 3/10/15, the Project Owner states regarding Trans-1:

There is no evidence in the record that such turns are inherently dangerous, only one anecdotal story of an alleged incident that the Project Owner has not been able to verify.

Terramar can verify this incident with copies of the email conversation confirming the incident and what actions were taken by Poseidon to prevent the dangerous situation from occurring again. Please see Terramar Exhibit 3042.

Visual Resources

On page 30 of the Project Owner's Written Testimony, Exhibit 3041, TN203811, docketed 3/10/15, the Project Owner states regarding VIS-5;

The requirement that a 20-foot-wide buffer zone be maintained "along the entire CECP/I-5 boundary" could be burdensome, and in the end, there may be practical reasons why it cannot be achieved.

Terramar would like to point out that the original condition called for a 'minimum' of 20' buffer. The Project Owner is clearly admitting that they cannot even provide this by requesting to delete the 20' minimum buffer. Terramar requests that the 20' minimum buffer be kept in the condition and increased if need be to shield the plant.

If this can not be accomplished, then the project is absolutely too large for the site. Terramar asks CEC to downsize the project as this size is not "needed" and a smaller project could be properly buffered, especially after the I-5 widening.