

## DOCKETED

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VIA E-FILING

Carlsbad Energy Center Project (07-AFC-06C)  
Karen Douglas, Commissioner and Presiding Member  
Andrew McAllister, Commissioner and Associate Member  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

Re: **Carlsbad Energy Center Project Petition to Amend (07-AFC-06C)  
Project Owner's Comments on the Presiding Member's Proposed Decision**

Dear Committee Members:

The Carlsbad Amendments Committee (the "**Committee**") published its Presiding Member's Proposed Decision (the "**PMPD**") on June 9, 2015. The PMPD recommends that the California Energy Commission (the "**CEC**") approve the Petition to Amend (the "**PTA**") the licensed Carlsbad Energy Center Project (the "**CECP**"). Carlsbad Energy Center LLC ("**Project Owner**") thanks the Committee for their thorough and considered evaluation of the PTA. Project Owner also thanks the intervenors, the City of Carlsbad and the CEC staff for their contributions throughout the course of these proceedings. Project Owner believes that the proposed decision ensures that the amended license will produce a superior project to the current license. The Notice of Availability that accompanied the PMPD requested that Project Owner file written comments on the PMPD by 4 p.m. on June 26, 2015. Accordingly, Project Owner offers the following comments in support of the PMPD.

**I. Project Owner Accepts that a Precautionary Override is Prudent for the Potential Impacts the I-5 Widening Project May Have on Visual Resources.**

CalTrans, jointly with the Federal Highway Administration, has proposed a project along the Interstate-5 ("I-5") North Coast Corridor to widen the highway. The widening project is anticipated to take place along the eastern boundary line of the CECP property ten to fifteen years from now. During evidentiary hearings, Project Owner presented evidence that, overall, the CECP improves on existing visual resources. Further, Project Owner presented evidence

that, with mitigation, the CECP will not have significant impacts on visual resources even when considered along with the impacts of the future I-5 widening project. CEC Staff, though it believes mitigation can and will be achieved, recommended that the Committee make a precautionary override finding due to the inability of the CEC to exercise direct authority over CalTrans to ensure sufficient visual screening in the CalTrans right of way. The PMPD accepted CEC Staff's recommendation due to the potential that, if CalTrans fails to comply with its CEQA obligation to apply all feasible mitigation, I-5 widening could result in screening gaps on the eastern perimeter in certain "pinch points." As noted by the PMPD, such gaps, if they occur, could result in momentary glimpses of the CECP facility to travelers along I-5. Project Owner accepts the PMPD's decision to make a precautionary override finding due to this potential.

The PMPD states that the visual resources issue to be overridden is relatively minor. After considering the significant public benefits of the amended CECP, and analyzing project alternatives, the PMPD finds that the amended CECP is required for public convenience and necessity and that there are not more prudent and feasible means of achieving the public convenience and necessity. Such a finding was necessary to override the potential impact of the I-5 widening project. Project Owner believes that this is an appropriate finding and requests that the Commission adopt this approach.

## **II. Project Owner Agrees With the PMPD's Findings Specific to An Amendment Proceeding.**

In evaluating the PTA, in addition to the findings necessary to certify a power plant, the Committee was required to make findings as to: (1) whether the changes are beneficial to the public, applicant, or intervenors; and (2) whether a substantial change in circumstances justified the change or the change is based on information that was not known and could not have been known with the exercise of reasonable diligence prior to the original licensing.

The PMPD found benefits to the public, applicant, and intervenors, because the amended CECP is more consistent with local land use regulations and improves the visual aesthetics of the area with the commitment to retiring and removing the existing Encina Power Station. The PMPD also found benefits because the CECP adds local generating capacity, provides local construction and operations employment opportunities, produces tax revenues, and has reduced environmental impacts compared to the currently licensed CECP.

The PMPD further found that there have been substantial changes in circumstances since the original license was approved and that changes to the CECP were based on information that was not known, or could not have been known, when the CECP was certified. Those circumstances included the shift in the electricity market to favor the use of simple-cycle generating units to aid the integration of renewable energy sources and support system reliability, the sudden and unexpected retirement of the San Onofre Nuclear Generating Station, and an agreement between Project Owner and the City of Carlsbad which resulted in amendments to land use regulations to allow for the development of this amended CECP. Project Owner believes that the findings are appropriate and, in combination with the findings necessary to certify a power plant, support a favorable decision on the proposed amendments.


**III. Project Owner Accepts the Changes Proposed to the Conditions of Certification.**

The PMPD revises some of the Conditions of Certification (“COCs”) proposed by CEC Staff for the amended CECP facility. The PMPD adds a new COC, DEF-1, to define terms used throughout the COCs. The PMPD also makes alterations to NOISE-9, SOIL&WATER-6, VIS-5, WORKER SAFETY-6, and COM-16. Project Owner does not object to any of these revisions and supports their inclusion in a final decision.

**IV. Conclusion.**

Project Owner believes that the Amended CECP is a superior project to the currently licensed CECP. CEC Staff determined that the Amended CECP provides additional benefits over the currently licensed CECP and should be approved. The Committee tasked with reviewing the PTA recommends that the PTA be approved and that an amended license be granted to construct and operate the CECP. Project Owner believes that the PMPD is a thorough and considered document that makes the necessary findings to approve the PTA. Accordingly, Project Owner encourages the Commission to adopt the PMPD findings and grant an amended license.

Locke Lord LLP

By:   
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