

DOCKETED

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Project Title:	Carlsbad Energy Center - Compliance
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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

Petition to Amend
The Carlsbad Energy Center

Docket Number 07-AFC-06C

**SARVEY MOTION TO REQUIRE THE APPLICANT TO PAY THE AMENMDNT FEE
AUTHORIZED BY SB 83**

Intervenor Robert Sarvey hereby moves to require the applicant Carlsbad Energy Center to pay an amendment filing fee of \$5,000 plus all expenses incurred by the CEC in processing this amendment. The legislature in response to a request by the CEC has passed SB 83 into law which closes a longstanding financial loophole in the Commissions amendment proceedings. This loophole has allowed power plant developers to shift the costs of processing their amendments to ratepayers. The new law went into effect on July 1, 2015. SB 83 amends Section 25806 of the Public Resources Code to read:

25806. (a) A person who submits to the commission an application for certification for a proposed generating facility shall submit with the application a fee of two hundred fifty thousand dollars (\$250,000) plus five hundred dollars (\$500) per megawatt of gross generating capacity of the proposed facility. The total fee accompanying an application shall not exceed seven hundred fifty thousand dollars (\$750,000). (b) A person who receives certification of a proposed generating facility shall pay an annual fee of twenty-five thousand dollars (\$25,000). For a facility certified on or after January 1, 2004, the first payment of the annual fee is due on the date the commission adopts the final decision. All subsequent payments are due by July 1 of each year in which the facility retains its certification. The fiscal year for the annual fee is July 1 to June 30, inclusive. (c) The fees in subdivisions (a), (b), and (e) shall be adjusted annually to reflect the percentage change in the

Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce. (d) The Energy Facility License and Compliance Fund is hereby created in the State Treasury. All fees received by the commission pursuant to this section shall be remitted to the Treasurer for deposit in the fund. The money in the fund shall be expended, upon appropriation by the Legislature, for processing applications for certification and for compliance monitoring. (e) A person who submits to the commission a petition to amend an existing project that previously received certification shall submit with the petition a fee of five thousand dollars (\$5,000). The commission shall conduct a full accounting of the actual cost of processing the petition to amend, for which the project owner shall reimburse the commission if the costs exceed five thousand dollars (\$5,000). The total reimbursement and fees owed by a project owner for each petition to amend shall not exceed the amount of the maximum total filing fee for an application for certification as specified in subdivision (a) of seven hundred fifty thousand dollars (\$750,000), adjusted annually pursuant to subdivision (c). Any reimbursement and fees received by the commission pursuant to this subdivision shall be deposited in the Energy Facility License and Compliance Fund. This subdivision does not apply to a change in ownership or operational control of a project.

Background

Carlsbad Energy filed an application for certification (AFC) to construct a new 540 MW combined cycle project called the CECP in 2007. Carlsbad Energy was required to provide a check for \$281,903.76 which was the required filing fee for a new AFC at that time.¹ During the course of the 5 year proceeding the CEC spent \$543,175.60 on consultant expenses to process the AFC.² The Commission also spent significant amounts of money for CEC Staff time, travel expenses, commissioner time and other activities necessary to process the CECP application. Just on consultants alone the ratepayers funded the \$261,814 of the cost to process this AFC that

¹ Exhibit 6011

² Exhibit 6012

rightfully should have been funded by Carlsbad Energy. Carlsbad Energy is a wholly owned subsidiary of NRG a Company that achieved net income of \$117 million in the fourth quarter of 2014 alone.

In 2014 Carlsbad Energy filed for two amendments to the 2012 license granted by the CEC. One amendment was to change the configuration of the Carlsbad Energy Center from a 540 MW combined cycle project to a 633 MW peaker project. The other amendment was for permission to demolish additional fuel tanks at the project site. Carlsbad Energy also filed for an amendment of its air quality permit with the San Diego Air Pollution Control District. The air pollution control district required a new application and fee since the entire equipment package was to be changed in the amendment. The air district charged an application fee of \$186,613.³ The air district rightfully did not allow Carlsbad Energy to shift the costs of processing their air permit to the residents of the County of San Diego. The CEC on the other hand did not require the filing of a new AFC or a new application fee despite the fact that the projects footprint was enlarged and an entirely new equipment configuration was proposed.

The current fee for filing an AFC is \$268,709 plus \$537 a MW. There is also an annual compliance fee of \$26,872 for all projects granted a license.⁴ The cost to file a new AFC for the amended CECP would be approximately \$608,630. But since the Commission is allowing Carlsbad to amend the CEC license rather than file a new AFC as they should be required to do, the cost to review this amendment is just the annual compliance fee of \$26,872. Ratepayer funds should not be used to provide corporate welfare to NRG. The CEC can now remedy this situation by requiring Carlsbad Energy to pay the amendment fee prescribed in SB 83.

Conclusion

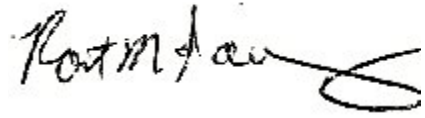
The original AFC process cost ratepayers hundreds of thousands of dollars to subsidize Carlsbad Energy's 2007 application. The Commission should not further damage ratepayer's interests by again allowing the ratepayers to fund the Carlsbad amendment. The Commission

³ docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN202326_20140513T092858_Application_for_an_Authority_to_Construct_Carlsbad_Energy_Cente.pdf Page 4 of 345

⁴ <http://www.energy.ca.gov/sitingcases/>

should require Carlsbad Energy to remit the amendment fee of \$5,000 plus the actual costs to amend the application pursuant to SB 83.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert Sarvey", written over a horizontal line.

Robert Sarvey