

## DOCKETED

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**Energy Resources Conservation  
and Development Commission**

In the Matter of:

THE CARLSBARD ENERGY CENTER PROJECT

DOCKET NO. 07-AFC-06C

**SIERRA CLUB COMMENTS ON PETITION FOR RECONSIDERATION OF FINAL  
ENERGY COMMISSION DECISION APPROVING CARLSBAD ENERGY CENTER  
PROJECT**

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Dated September 16, 2015

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

In the Matter of:

THE CARLSBARD ENERGY CENTER PROJECT

DOCKET NO. 07-AFC-6C

**SIERRA CLUB COMMENTS ON PETITION FOR RECONSIDERATION OF ENERGY  
COMMISSION FINAL DECISION APPROVING CARLSBAD ENERGY CENTER  
PROJECT**

Pursuant to the Notice of Energy Commission Hearing on Petitions for Reconsideration, Sierra Club respectfully submits the following comments on the Petitions for Reconsideration of the California Energy Commission’s Final Decision Approving Carlsbad Energy Center, LLC’s Application for Certification (“Final Decision”).

As Intervener Robert Sarvey makes plain in his Petition for Reconsideration (“Sarvey Petition”), the California Energy Commission’s (“Commission”) Final Decision should be reconsidered because the Commission failed to properly consider and mitigate the greenhouse gas emissions from the Carlsbad Energy Center (“Carlsbad Plant”). The Sarvey Petition, however, does not set out why that mitigation must happen in the text of this Commission’s obligations under the California Environmental Quality Act (“CEQA”). Intervener Sierra Club offers these comments to further explain why the Commission must reconsider its Final Decision in order to ensure compliance with its CEQA obligations.

**A. The Final Decision Mischaracterized the Project Description for the Carlsbad Plant**

The Final Decision’s CEQA analysis is flawed as a result of the Commission’s mischaracterization of the project it was reviewing during this proceeding. CEQA requires a project description that accurately describes the activity being undertaken. In fact, an accurate, stable, finite project description is an essential element of an informative and legally sufficient environmental review under CEQA.<sup>1</sup> The Commission failed to provide such a description.

In the Commission’s Final Decision for the Carlsbad Plant, the Commission noted that this project is going forward because of changed circumstances. The change was, in part, to “respond to the unanticipated and unprecedented retirement of the San Onofre Nuclear Generating Station [SONGS].”<sup>2</sup> This change is truly significant.

As a result of the permanent retirement of SONGS, the California Public Utilities Commission (“CPUC”) instituted Rulemaking 12-03-014. In that proceeding, the CPUC adopted a “Track 4” decision authorizing additional energy procurement to meet the gap left by the retirement of SONGS. The CPUC’s decision did not authorize *any* additional gas-fired generation.<sup>3</sup> The CPUC explained that “we will not require any specific incremental procurement from gas-fired resources. This means that all incremental procurement as a result of this decision may be from preferred resources.”<sup>4</sup> Further, as the CPUC noted, the energy from SONGS was GHG-free<sup>5</sup> making analysis of GHG’s from the new energy resource a particularly relevant consideration during the environmental review.

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<sup>1</sup> (CEQA guidelines 15124; County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185.

<sup>2</sup> Final Decision at 2-10.

<sup>3</sup> Rulemaking Decision at 2-3.

<sup>4</sup> Rulemaking Decision at 93.

<sup>5</sup> Rulemaking Decision at 9.

Given this context, the Commission's project description should have reflected this significant change in circumstances rather than completely ignore the change. The fundamental failure to meaningfully incorporate the change in circumstances for the Carlsbad Plant doomed the GHG emissions analysis from the beginning. This failure masked the fact that the project the Commission was not undertaking the mere tweaking of a power plant approval that had languished for years, rather the Commission was evaluating a fossil-fueled power plant to replace a GHG-free energy source even as there was no requirement or reason for the new energy source be a gas-fired plant.

The Commission's failure to develop a CEQA project description that reflected the changed circumstances for the Carlsbad Plant is a prejudicial abuse of discretion which the Commission should remedy during its reconsideration of its Final Decision.

**B. A Properly Drawn Project Description Would Have Resulted In a Different GHG Emissions Base-line and A Proper Assessment Of The GHG Emissions From The Carlsbad Plant**

“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”<sup>6</sup> “An omission in an EIR's significant impacts analysis is deemed prejudicial if it deprived the public and decision makers of substantial relevant information about the project's likely adverse impacts.”<sup>7</sup>

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<sup>6</sup> Cal. Pub. Res. Code § 21061.

<sup>7</sup> *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority*, 57 Cal.4th 439 (2013), citing *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.

Here, as a result of the improper project description and subsequent improper base-line, the Commission improperly determined that GHG emissions for the Carlsbad Plant would be insignificant despite the reality that the project will emit in excess of 1.7 MTCO<sub>2</sub>E per year of GHGs. In so doing, the Commission improperly truncated its analysis of the environmental impacts of the Carlsbad Plant. In particular, the Commission found that the GHG emissions from the Carlsbad Plant were insignificant “when considered on a system-wide basis.”<sup>8</sup> The proper base-line for this project, however, is zero since the project is being built to replace a GHG emissions-free facility. The fact that the PUC did not authorize new gas-fired resources to replace SONGS further highlights why the base-line should have been zero instead of the system-wide GHG emissions.

The Final Decision’s finding of insignificance as compared to the incorrect system-wide GHG emissions resulted in the Commission’s failure to explore proper mitigation measures for the Carlsbad Plant, including those described in the Sarvey Petition. In light of the true nature of the project the Commission is approving, it is obvious that the proper level of analysis for the Carlsbad Plant is not its GHG emissions as part of the entire electricity system, rather the proper analysis is the GHG emissions of this facility as compared to an replacement option with fewer—or no—GHG emissions. Had the Commission focused on the project level emissions against a base-line of zero, its Final Decision would have properly found that the emissions from the Carlsbad Plant are significant. Once this proper significance finding was made, the Commission would have undertaken the analysis necessary to describe the environmental impacts of the GHG emissions and then to explore all feasible mitigation for the Carlsbad Plant,

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<sup>8</sup> Final Decision at 6.1-24.

including the mitigation put forward in the Sarvey Petition.

The Commission should reconsider its Final Decision and determine that the Carlsbad Plant has significant emissions and then undertake the analysis needed to reduce—or eliminate—those emissions.

For the foregoing reasons, Sierra Club urges the Commission to reconsider its Final Decision certifying the Carlsbad Plant.

Dated: September 16, 2015

Respectfully submitted,

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DECLARATION OF SERVICE

I, Rikki Weber, declare that on September 16, 2015, I served and filed copies of the **SIERRA CLUB COMMENTS ON PETITION FOR RECONSIDERATION OF FINAL ENERGY COMMISSION DECISION APPROVING CARLSBAD ENERGY CENTER PROJECT** dated September 16, 2015. The most recent Proof of Service List, which I copied from the web page for this project at: <http://www.energy.ca.gov>, is attached to this Declaration.

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Dated: September 16, 2015

/s/ RIKKI WEBER  
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