



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
 COMMISSION OF THE STATE OF CALIFORNIA  
 1516 NINTH STREET, SACRAMENTO, CA 95814  
 1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION (AFC) FOR THE  
**CARLSBAD ENERGY CENTER PROJECT**

DOCKET No. 07-AFC-6

**COMMITTEE RULING ON INTERVENOR CENTER FOR BIOLOGICAL  
 DIVERSITY’S PETITION TO COMPEL DATA RESPONSES**

On September 26, 2008, Intervenor Center for Biological Diversity (Center) issued Data Requests to Carlsbad Energy Center, LLC (the Applicant). On October 14, 2008, the Applicant filed objections to each of those requests. Center responded on November 10, 2008, by filing a *Petition for Order Directing Response to Data Requests* (Petition) for all of the Data Requests. Following briefing<sup>1</sup> and a Committee Hearing on December 15, 2008, the Carlsbad AFC Committee adopts the following rulings on the Petition.

The Petition comes before us prior to the presentation of any evidence. Nothing in these rulings is intended to comment on the merits of the Application for Certification (AFC) or the legal and procedural issues involved in our review, such as the scope of the environmental impact analysis of greenhouse gas emissions. Those issues will be discussed and decided during the evidentiary hearings.

A compilation of the Center’s Data Requests, renumbered as proposed by the Applicant to avoid duplication of request numbers, is attached as Attachment A for reference.

The exchange of information assists the parties in preparing their testimony and recommendations for the evidentiary hearings:

“(b) Any party may request from the applicant any information reasonably available to the applicant which is relevant to the notice or application proceedings or reasonably necessary to make any decision on the notice or application. All such requests shall include the reasons for the request.” [Cal. Code Regs., tit. 20, § 1716(b).]

<sup>1</sup> Responsive briefs were filed by the Applicant (November 20, 2008) and Parties CURE (November 12, 2008) and Power of Vision (November 21, 2008). In addition, public comments were filed by the City of Carlsbad (November 21, 2008).

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The provision of “information” by the Applicant or any other party includes data and other objective information available to it. The answering party is not, however, required to perform research or analysis on behalf of the requesting party. The line between discoverable data and undiscoverable analysis and research is dependent on the particulars of a request and cannot be drawn with precision.

In evaluating the requests, we consider the following general factors:

- The relevance of the information.
- Is the information available to the Applicant, or from some other source, or has it already been provided in some form?
- Is the request for data, analysis, or research?
- The burden on the Applicant to provide the data.

Although these requests were submitted more than 180 days following the Commission’s acceptance of the AFC as complete, we find that good cause exists to allow those that we allow below nonetheless. The project’s greenhouse gas emissions are clearly an element of our analysis.<sup>2</sup> In addition to greenhouse gas emissions, the requests address information relevant to project alternatives, which may also be in issue.<sup>3</sup>

**Requests A1 and A2** seek greenhouse gas emissions information extending beyond the emissions from the generation equipment itself to include the gases emitted in the production of its construction materials, in supplying water to the project, and in disposing of its waste products. The Applicant argues that it cannot provide detailed estimates for much of the construction materials because it has not yet undertaken the engineering and design studies that would, for example, identify the quantities of concrete required to construct the project.

While we recognize that the construction material amounts cannot be estimated with precision, the Applicant is certainly capable of providing the information that it does possess about its material requirements, caveated as necessary regarding the information’s precision or its ability to provide any information.

**We direct the Applicant to respond to Requests A1 and A2.**

**Request A3**, clarified at the Hearing on the Petition, requests both the identification of mitigation measures for HFC, PFC, and SF6 emissions and the identification of plant equipment which will minimize those emissions. Information about the plant equipment

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<sup>2</sup> The recently published Preliminary Staff Assessment (PSA) contains a multi-page discussion of the subject in its Air Quality analysis.

<sup>3</sup> Though preliminary, the PSA suggests that staff may ultimately testify that one or more project impacts are significant and cannot be mitigated, necessitating a consideration of project alternatives. See California Code of Regulations, title 20, section 1755.

is best known to the Applicant and relevant to our analysis of the AFC. The designation of specific mitigation measures is in the nature of analysis and research.

***We therefore direct the Applicant to respond to Request A3 to the extent of identifying project equipment which minimizes emissions of the specified gases.***

Although we deny the request that the applicant identify specific mitigation measures, we note that, if significant emission impacts are identified, appropriate mitigation measures must be identified or a showing that there are no feasible mitigation measures made. Thus the parties may ultimately need to address this topic. We therefore encourage, but do not require, that the Applicant address that portion of the request.

***Requests B1 through B5*** seek information about the sources and amounts of liquefied natural gas (LNG) that the project may combust during operations. The Applicant argues that it has no control over the source of its gas supply. It believes that the introduction of LNG into its supply.

We agree that the Applicant lacks the information requested. It is best requested of San Diego Gas and Electric (SDG&E) the provider of natural gas to the project.

***Requests B1 through B5 are therefore denied.***

During the Hearing on the Petition, the Center restated ***Request C1*** to ask if the calculations of greenhouse gas emissions provided in the AFC were made with the same parameters as were used to calculate the emissions of criteria pollutants. A question asking for clarification of previously provided information is relevant and appropriate in this proceeding and therefore should be answered.

***We direct the Applicant to respond to the question as restated above.***

Similarly, ***Request C2*** seeks clarification of previously provided data.

***The Applicant is directed to provide a response.***

***Requests C3 and C4*** relate to units 4 and 5 of the existing power plant. While, unlike units 1 through 3, they are not proposed to be shut down if the project is approved, their emissions may be relevant to our analysis in several ways, including a cumulative impacts analysis and a consideration of project alternatives. The Applicant's chief concern about providing data relating to those units is that doing so might bring them under the Energy Commission's jurisdiction in some way. In our view, providing data about those units is no different than providing it for some other nearby emissions source. That simple act does not confer jurisdiction on the Commission.

***The Applicant is directed to provide the requested information.***

At the Hearing on the Petition, the Center *withdrew Request D1*. It therefore need not be answered.

**Request E1** seeks an estimate of the useful life of existing units 1 through 5 if the project is not approved and constructed. While potentially relevant to the value to be given to any credit for shutting down those units, it seeks not information upon which the Center's experts could form an opinion but instead the Applicant's opinion. As the applicant notes, such an estimate is speculative at best.

***We decline to direct the Applicant to answer that request.***

In contrast, **Request E2** seeks a list of permits that would be necessary to continue to operate units 1 through 5. Information about the status of existing permits is best known to the Applicant.

***We direct the Applicant to answer the request as to existing permits and future requirements that it is aware of but it need not speculate as to potential future permits.***

**Request E3** also seeks data—the individual annual operating hour totals and annual capacity factors which form the 5-year average given by the Applicant—which may be relevant to our emissions analysis. To the extent that the Applicant possesses the information, it is directed to supply it.

***While the Applicant finds the data not very helpful, it is not our place to tell a party how best to request or use data.***

Regarding **Request F1**, the Applicant has volunteered to provide the information available to it.

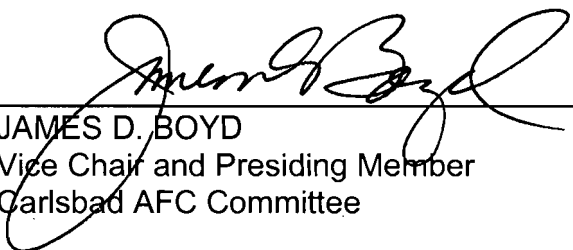
***We therefore direct that it do so.***

**Requests F2 and G1** were withdrawn by the Center at the Hearing on the Petition and need not be answered.

**IT IS THEREFORE ORDERED** that the Applicant respond on or before January 26, 2009 to the Data Requests that we have identified above as requiring a response. To the extent that information has been previously provided in a document filed in this case, the response may direct the Center's attention to that document and an approximate location within the document. The Applicant may provide responses that

extend beyond those requirements and, regarding information that it expects will be presented at the evidentiary hearings, we encourage it to do so now rather than later.

Dated December 26, 2008, at Sacramento, California.



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JAMES D. BOYD  
Vice Chair and Presiding Member  
Carlsbad AFC Committee



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KAREN DOUGLAS  
Commissioner and Associate Member  
Carlsbad AFC Committee

## **ATTACHMENT A**

### ***Center Data Requests***

#### **A Background**

The California Global Warming Solutions Act of 2006 (AB 32) and related Executive Orders have set aggressive goals for the State to significantly reduce its greenhouse gas emissions over the next several decades. This includes attention to emissions generated outside the state by power that is ultimately used in California. Yet the Applicant only partially analyzed certain greenhouse gas emissions from the new project.

- A1.** Please provide a full greenhouse gas inventory of direct and indirect emissions sources from the project, including building materials, construction emissions, operational energy use, vehicle trips, water supply, and waste disposal.
- A2.** Please estimate the amount of HFC, PFC, and SF<sub>6</sub> that will be emitted by the CECP.
- A3.** Please discuss mitigation measures to prevent the release of HFC, PFC, and SF<sub>6</sub>.

#### **B Background**

The San Diego Air Pollution Control District noted in its October 17, 2007 information request that, "It is likely that the project may be operated continuously or intermittently on natural gas derived from imported liquefied natural gas (LNG)." The processes necessary to convert and transport LNG are very energy intensive and could significantly increase California's current emissions from domestic sources of natural gas.

- B1.** Will the CECP use imported LNG?
- B2.** If so, please estimate the amount of LNG the CECP will use on an annual basis.
- B3.** What are the factors that will dictate "intermittent" or "continuous" use of LNG at the CECP?
- B4.** Please identify the LNG terminal or terminals that will provide gas for the CECP. Please list the county or countries of origin of the LNG to be shipped to these terminal(s). Estimate the relative amount of LNG that will be transported from each country of origin.
- B5.** Please estimate the full lifecycle carbon footprint of the use of LNG,

including the impacts of extraction, liquefaction, transportation, and regasification of the imported LNG to be used.

## **C Background**

Section 5.1 of the Application for Certification (“AFC”) calculates certain greenhouse gas emissions from specific elements of the project (the new equipment and the existing Units 1, 2, and 3). The calculations estimate that the CECP will emit  $8.50 \times 10^5$  metric tons of carbon dioxide equivalent emissions. In City Data Response 50, the Applicant concludes that the project will only lead to “a net increase in GHG emissions of approximately  $2.08 \times 10^5$  metric tons per year of carbon dioxide equivalent GHGs” based on assumptions about the benefits of shutting down Units 1, 2, and 3. However, this calculation neglects several potentially significant sources of greenhouse gases from the project and seriously underestimates the actual emissions that could result from this project, while potentially overestimating the benefits of retiring Units 1, 2, and 3. Table 5.1B-20 of the AFC estimates the greenhouse gases from the to-be-retired Units 1, 2, and 3 “based on maximum 2-year annual average with a 10-year look back period.”

- C1.** Since the AFC lists several conditions under which the CECP may operate once online (i.e., base load, load following, daily cycling, full shutdown), please confirm that the calculations of greenhouse gas emissions from the new equipment are based on the project’s maximum potential to emit.
- C2.** Please provide the 2-year period relied upon to calculate emissions.
- C3.** Please calculate greenhouse gases based on the most recent (current) 2-year average for each of these units, and for units 4 and 5. Please include the method used to calculate these emissions.
- C4.** Please provide the breakdown of oil use versus natural gas use in these units over the past 2 years and the hours of use for each type of fuel. Also provide this information for units 4 and 5.

## **D Background**

Table 5.1B-12 of the AFC shows a significant decrease in NO<sub>x</sub> and SO<sub>x</sub> emissions from Units 1, 2, and 3 since 1995.

- D1.** Please explain these decreases.

## **E** Background

The anticipated life expectancy of the proposed CECP is 40 years. Existing Units 1, 2, and 3 are already more than 50 years old, and Units 4 and 5 are over 30 years old.

- E1.** Please provide an estimate of the remaining useful life of Units 1, 2, and 3, as well as Units 4 and 5, if the CECP were not constructed.
- E2.** Would new permits be necessary in order to keep Units 1, 2, 3, 4, and 5 operating for this amount of time?
- E3.** Please provide the annual hours of use for Units 1, 2, 3, 4, and 5 over each of the past 5 years (not the 5-year average). Also, please provide the annual capacity factor for each of the units over each of the past 5 years (not the 5-year average).

## **F** Background

The AFC states that one of the goals of the project is “meeting the expanding need for new, highly efficient, reliable electrical generating resources located in the load center of the San Diego region.”

- F1.** What is the reliability need of the area? (Please include a numerical answer that identifies the number of megawatts necessary to meet existing reliability).
- F2.** If the CECP will provide more than the reliability needs of the region, please discuss the ways in which the excess capacity provided by the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment and the impacts this growth may have on the environment including the potential increased emissions of greenhouse gases.

## **G** Background

The AFC does not appear to include analysis of an alternative that could meet the region’s reliability needs with a smaller facility.

- G1.** Please provide an analysis of this alternative including a calculation of the potential greenhouse gas emissions.