

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	203230
Document Title:	Project Owner's Objection to Power of Vision Data Request to Mayor Pro Tem Mark Packard
Description:	N/A
Filer:	Dee Hutchinson
Organization:	Locke Lord LLP
Submitter Role:	Applicant Representative
Submission Date:	10/21/2014 4:21:28 PM
Docketed Date:	10/21/2014

October 21, 2014

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)**
Objection to Power of Vision Data Request to Mayor Pro Tem Mark Packard

Dear Committee Members:

On September 26, 2014, the California Energy Commission (“**CEC**”) filed a Committee Scheduling Order (the “**Order**”) for the Carlsbad Energy Center Project (“**CECP**”). The Order sets forth the general time frame for activities to be conducted in the CECP proceeding but does not identify specific deadlines for future events. On October 14, 2014, Mayor Pro Tem Mark Packard with the City of Carlsbad filed a letter with the CEC requesting the CEC to issue a modified scheduling order with specific target dates for future activities and decisions in the CECP proceeding (the “**Request for Modification**”). In the Request for Modification, the Mayor urges expeditious review of the amended CECP, in part, based upon electricity reliability needs in Southern California.

On October 16, 2014, Intervenor Power of Vision (“**POV**”) filed two documents in response to the Request for Modification. First, POV filed a data request to Mayor Pro Tem Mark Packard and the City of Carlsbad requesting additional information relating to the Request for Modification (“the “**Data Request**”). Second, POV filed a letter to the CEC Commissioners arguing that “need” for new power producing capacity at the Carlsbad site is not one of the criteria affecting the CEC’s deliberations (the “**CEC Letter**”).

Carlsbad Energy Center LLC (“**Project Owner**”) herein objects to POV’s Data Request and responds to POV’s CEC Letter.

First, Project Owner objects to POV’s Data Request because Mayor Pro Tem Mark Packard and the City of Carlsbad are not parties to the CECP proceeding. Section 1718(d) of the California Code of Regulations authorizes the issuance of data requests. Under this provision, any party

may request certain information from “a party other than the applicant” (20 Cal. Code Regs. § 1716(d) (emphasis added).) “Party” means “any applicant, respondent, complainant, or intervenor, and the staff of the commission.” (20 Cal. Code Regs. § 1201(e).) Because Mayor Pro Tem Mark Packard and the City of Carlsbad are not parties to the CECP proceeding, it is improper for POV to submit data requests to these entities. Counsel to the City of Carlsbad has graciously responded with answers to the questions raised to the City and the Mayor Pro Tem, but also noted that they are not parties and that they were responding out of courtesy.

Second, the Request for Modification constitutes Mayor Pro Tem Mark Packard’s and the City of Carlsbad’s public comment on the CECP. The letter reflects a respected entity’s important opinion on the CECP. In light of the CEC’s longstanding goal to ensure public access to and participation in the licensing process, it is improper for POV to attempt to silence these public comments based upon its opposing opinions in the matter. It is likewise inappropriate to do so by utilizing improper procedural tactics.

Finally, the CEC Letter points to the need for reliable electricity in Southern California. POV’s argument that need is not a criteria affecting the CEC’s deliberations is misplaced. While it is true that need is not a formal criteria in the siting process, the practical need for reliable electricity is most certainly relevant to the CEC siting process. POV fails to acknowledge the difference between a formally determined need and a practical, common sense need.

Please contact me if you have any questions about the foregoing.

Locke Lord LLP



By: John McKinsey
Attorneys for Carlsbad Energy Center LLC

JM:dh