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**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**

**PETITIONS TO AMEND THE
CARLSBAD ENERGY CENTER PROJECT**

Docket No. 07-AFC-06C

**COMMITTEE ORDER DENYING POWER OF VISION'S
PETITION TO COMPEL DATA RESPONSES**

Upon consideration of the Petition to Compel Data Responses filed by Power of Vision (POV or Petitioner),¹ and the written and oral arguments of the parties and public, the Committee designated to conduct proceedings in this matter makes the following findings:

1. On October 7, 2014, POV filed its Data Request Set II, consisting of Data Requests 6 through 13.²
2. Request 8 requests four-dimensional cross-section drawings, one for each pair of power units showing the horizontal and vertical relationships between the generating components, transmission lines, roads, slopes, and other project features, including distances.
3. Request 9 requests an elevation drawing of the transmission lines proposed for construction along Interstate 5 (I-5).
4. Request 11 requests three visual renderings showing the transmission lines proposed for construction along I-5 and the proposed visual screening.
5. Requests 12 and 13 note that the amendment petition cites to 1978 and 1975 design manuals for the 115 kv and 230 kv lines, respectively. They ask the Project Owner, NRG, to prepare tables comparing the 1978 and 1975 manuals' standards to 2008 and 2013 vintage manuals' standards for:
 - Vertical clearances of conductors above ground and roadways
 - Vertical clearances of conductors from other supporting structures and buildings
 - Vertical separation between phases of the same circuit
 - Number of insulators and length of the string

¹ Petition to the Committee for an Order Directing the Applicant to Supply Responses to Power of Vision (POV) Data Request Numbers 8, 9, 11, 12, & 13, TN 203338, filed November 17, 2014. To comport with Energy Commission vernacular, we refer to this document as the Petition to Compel Data Responses or simply the "Petition."

² TN 203177

6. On October 21, 2014, the Project Owner objected to each of the Data Requests in POV's Set II.³
7. On November 17, 2014, POV filed its Petition to Compel Data Responses.
8. The Committee conducted a hearing on the Petition during the December 3, 2014, Committee Status Conference. POV, the Project Owner, Staff and other parties presented oral and written arguments in favor of and in opposition to the Petition. The Committee conducted closed session deliberations at a continuation of the Status Conference on December 10, 2014.

Discussion

The Project Owner objects to the requests on the grounds that they “seek information that is not necessary to reach a decision on the [Petition to Amend]”; “seek information equally available to the asking party”; seek “detailed engineering design details that are not known at this time”; or “the information sought would be costly and time consuming to prepare.”⁴ It asserts that it has provided much of the information about the heights and horizontal spacing of project components in the amendment petition and data responses.⁵

We agree that most of the information sought is in excess of that necessary to decide whether to approve the petition to amend. At this stage in the permitting process, final project design information is not expected; we simply require a sufficiently detailed description so that we can assess whether the project will have unmitigated environmental impacts or fail to comply with applicable laws and standards. The cross-section drawings requested by POV are not the only tool for evaluating the visual impacts and standards compliance of the project and are beyond the level of detail necessary to make those determinations. With visual screening, many features will not be visible outside the project perimeter. Petitioner is free to develop its own drawings and renderings based upon available information; we simply decline to require that the Project Owner do so for Petitioner.

There is one exception, however, namely the transmission lines proposed along the I-5 right of way. They will be visible from outside the perimeter. POV has, from early in this amendment proceeding, identified the height of the lines and supporting structures as a potential visual issue. In response, the Project Owner has moved several of the poles from the top of the surrounding berm to inside the berm, giving them a lower profile to external observers.

While we have yet to receive any evidence, we sympathize with the community's desire that the transmission lines be no higher than is necessary to provide the required safety margins. We therefore require the Project Owner to articulate specific standards regarding the necessary heights of poles and constraints (whether based on engineering requirements, site limitations, or otherwise) against placing the poles within the bermed area and reducing the heights of poles that cannot be placed in the bermed area. This

³ TN 203227

⁴ Project Owner's objections, TN 203227, pp. 2 – 4

⁵ See the table attached as Exhibit 1 to the Project Owner's response to the Petition to Compel, TN 203383

articulation by the Project Owner shall include an explanation of the basis for its assertion and may take the form of a drawing, text, or any other way to most effectively communicate the constraints. In addition, the Project Owner shall indicate any areas of flexibility to mitigate or overcome the identified constraints and the means and methods to do so. Staff shall be called upon to review the information provided by the Project Owner and provide its independent evaluation and opinion on the identified constraints and whether there is any flexibility to mitigate the identified limitations.

Both Project Owner and Staff shall discuss the issues regarding the placement and height of poles in workshops.

A visual rendering showing the transmission lines as now proposed will be most helpful should it remain necessary to litigate the visual impacts of the transmission lines. During our December 3, 2014 hearing, the Project Owner called our attention to a September 12, 2014 data response that provides renderings of the originally proposed transmission lines looking from both directions on I-5 at closer distances than the previously established Key Observation Points.⁶ On December 10, 2014, it filed updated versions of those renderings showing the northernmost poles at the reduced heights it now proposes.⁷ These new renderings are responsive to Request 11 and sufficient to allow us to assess the impacts of the transmission lines.⁸

Regarding the 1978 and 1975 design manuals, during the December 3, 2014 Conference, Petitioner said that it cannot find those books at the local library. It has not, however, searched the specialized libraries more likely to possess them—the California State University campuses or the University of California (e.g., University of California San Diego School of Engineering library). We do not find it appropriate to require the Project Owner to digest and compile a table of standards for Petitioner. Commission Staff indicated that it was obtaining copies for Staff's use; when they arrive, we expect that Staff will offer to share them with Petitioner to the extent allowed by any terms of use for the publications.

In addition, Staff shall prepare and circulate a condition of certification that will assure that the poles are no higher than necessary based on Staff's knowledge and expertise that includes, but is not limited to, the 1978 and 1975 design manuals. This condition of certification will be vetted during workshops.

Further Findings

9. The cross-section drawings and elevation drawing described in Requests 8 and 9 are not necessary to evaluate the visual impacts of the amended project. Examination of final project dimensions is properly the subject of compliance reviews occurring after approval of a project. The requests ask the Project Owner to compile already available information into a form Petitioner prefers. Such activity is beyond the mere provision of information authorized by the data request regulation.

⁶ TN 203058

⁷ TN 203431

⁸ Had it not already done so, we would order the Project Owner to provide similar renderings.

10. The revised visual renderings recently provided by the Project Owner (Figures DR POV 5-2 Revised and DR POV 5-3 Revised⁹), are sufficient to allow the Committee to assess the potential visual impacts of the transmission lines which abut I-5.
11. The information sought by Data Requests 12 and 13 would require the Project Owner to compile a table of information from a publication that should be available from a library accessible to Petitioner. It is not necessary or appropriate to compel the Project Owner to gather data on Petitioner's behalf.

THEREFORE, THE COMMITTEE ORDERS that the Petition is **DENIED**.

Dated: December 18, 2014, at Sacramento, California.

Original Signed By:

KAREN DOUGLAS
Commissioner and Presiding Member
Carlsbad Amendment Committee

Original Signed By:

ANDREW McALLISTER
Commissioner and Associate Member
Carlsbad Amendment Committee

⁹ TN 203431