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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 FOLLOWING THE PRELIMINARY STAFF ASSESSMENT

The following constitutes the Committee's Order following its review of the Preliminary Staff Assessment (PSA).¹ The Order directs staff to consider and respond to Committee questions in five areas.

Generally Applicable—Use of Previous EIR

As we indicated at the informational hearing, we intend to re-use the 2012 Commission Decision as a previous Environmental Impact Report (EIR). Under California Environmental Quality Act (CEQA) Guidelines section 15162, a supplement to the 2012 Carlsbad Energy Center Decision (2012 Decision)² is required only where:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known in 2012, shows:
 - (A) The project will have one or more significant effects not discussed in the previous EIR;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

¹ TN 203457

² <http://www.energy.ca.gov/2011publications/CEC-800-2011-004/CEC-800-2011-004-CMF.pdf>

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The PSA does not explicitly apply the standards of CEQA guidelines section 15162. We therefore direct that, for each of the topics that contain a CEQA analysis, staff include a discussion of whether or not supplementation of the previous EIR is necessary under section 15162, briefly summarize the substantial changes or new information, the resulting new or increased significant effects, and new or newly feasible mitigation measures or alternatives. For those areas in which staff concludes that no supplementation is necessary, the environmental analysis that is already provided in the 2012 Decision should be retained in the FSA as it may provide a useful means for members of the public to better understand the project. If we do conclude that no supplementation is required, we will rely upon the environmental analysis and conclusions of the 2012 Decision and will not re-litigate them. Should the revised project result in significant impacts that cannot be avoided or mitigated, the Committee will make a recommendation about overriding those impacts.

Although we may not revisit the environmental analysis for some topics, the Laws Ordinances Regulations and Standards (LORS) analysis is not subject to section 15162 and must be updated to the extent necessary to analyze the compliance of the amended project with LORS.

Water Supply

We recognize that there is some debate over whether a Water Supply Assessment (WSA) is required. Prior to the January 7, 2015, Committee Conference, the City of Carlsbad asserted that the Carlsbad Energy Center Project (CECP) is not a “project” subject to the WSA requirement.³ The City’s conclusion was based only on whether the CECP meets the test in Water Code section 10912, subdivision (a)(5).⁴ However, the City’s letter did not address whether the project meets the test set forth under Water Code section 10912, subdivision (a)(7). That subsection defines a project as any use that would demand the same or a greater amount of water as a 500-unit subdivision.

On January 12, 2015, the City of Carlsbad filed a letter applying Water Code section 10912, subdivision (a)(7) to the amended project.⁵ It concludes that the amended project would use less water than a 500-unit subdivision. If staff agrees with the City’s analysis, it need not include a WSA in the FSA but shall describe its analysis of the applicability of the subsection 10912(a)(7). If staff does not agree, it shall prepare an analysis which addresses the elements of a WSA, including the method of calculating

³ “[A] proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

⁴ “[A] proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

⁵ TN 203514

water demand for a 500-unit subdivision in the City of Carlsbad and the source for information, to the extent possible in the time allowed for preparation of the Final Staff Assessment (FSA).

In addition, staff is directed to address the off-site impacts of the use of trailer-mounted water filters (waste disposal, traffic, air quality, and others).

Finally, the reclaimed water supply line is inconsistently described, varying from 12 to 36 inches in diameter and 2600 feet to 1.5 miles in length. Staff is directed to reconcile its description throughout the FSA.

Land Use

The PSA notes that the City of Carlsbad has approved general plan and zoning amendments which would eliminate the previous inconsistencies. This information seems to support the analysis contained in the May 2011 draft PMPD⁶ regarding consistency with the general plan, zoning, and other plans. However, because the proposed project has changed somewhat, we direct staff to more fully discuss the project's compliance with the development standards, especially those which are location-specific, such as setbacks, in the FSA.

In addition, although the stacks will exceed the zoning height standards and staff does not believe it is possible to approve a variance,⁷ the PSA asserts that the failure to conform with the LORS does not give rise to a significant impact under CEQA because, on balance, the project has positive overall impacts and benefits. However, the Committee needs an analysis of the project's compatibility, or lack thereof, with neighboring land uses. Staff is directed to include a discussion of this issue in the FSA.

Staff shall also discuss whether expansion of the project footprint requires an adjustment of lot lines to ensure that the project will occupy a single legal parcel.

To aid the Committee and the public in referencing and reviewing relevant City of Carlsbad planning documents during this proceeding, staff is directed to docket all of the applicable plans, ordinances and development standards.

Alternatives

The PSA discusses alternative sites by referring to the discussion in the 2012 Decision. It also suggests that it is not necessary to discuss alternative sites due to the project's "strong relationship to the existing industrial site," citing Public Resources Code section 25540.6. Please clarify which of these two approaches staff is recommending and discuss whether any of the 2012 Decision's discussions and conclusions regarding the alternative sites require revisions.

Regarding the demand-side management (DSM) and distributed generation (DG) alternatives, we direct that the discussion of those alternatives be expanded to include

⁶ <http://www.energy.ca.gov/2011publications/CEC-800-2011-004/CEC-800-2011-004-PMPD.pdf>

⁷ TN 203385, p. 65, Ins. 9 - 13

current information about the barriers to more extensive use of those resources, timing issues, and the efforts that are being made to overcome those barriers. The PSA discusses whether these alternatives satisfy the project objectives in general conclusory terms; we direct that the FSA contain a more detailed discussion regarding satisfaction of each of the identified objectives.

Regarding the Project Objectives, use of “generating” and “generation” in the first four objectives unnecessarily excludes DSM from consideration. DSM should be accepted or rejected on its performance characteristics rather than whether it is a generating resource. In the first objective, please clarify what is meant by the use of “expanding.” The third to last objective appears to merely duplicate themes contained in the first and second objectives.

Noise

Staff is directed to ascertain, describe, and discuss the standards that the City of Carlsbad would apply in considering a noise variance to allow nighttime concrete pours and any other activities proposed outside of normal construction hours. The discussion should include how those standards can be applied by the Compliance Project Manager upon request of the Project Owner. Staff shall also include a discussion of any community outreach that may be required as a condition of allowing such a noise variance.

THEREFORE, THE COMMITTEE ORDERS that staff provide the additional information and analysis identified above in preparing its Final Staff Analysis.

Dated: January 15, 2015, 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