

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	206445
Document Title:	Project Owner's Comments and Proposal Regarding CDFW's Comments on the Presiding Member's Proposed Decision
Description:	N/A
Filer:	Dee Hutchinson
Organization:	Locke Lord LLP
Submitter Role:	Applicant Representative
Submission Date:	10/28/2015 11:33:26 AM
Docketed Date:	10/28/2015

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

In the Matter of:

**Petitions to Amend The
CARLSBAD ENERGY CENTER PROJECT**

DOCKET NO. 07-AFC-06C

**Project Owner's Comments and Proposal Regarding
CDFW's Comments on the Presiding Member's Proposed Decision**

On August 3, 2015, after thorough and considered evaluation, the California Energy Commission ("CEC" or "Commission") docketed its Final Commission Decision approving Carlsbad Energy Center LLC's ("Project Owner") Petition to Remove Obsolete Facilities and Petition to Amend (collectively, the "PTA") the Carlsbad Energy Center Project ("CECP"). On September 2, 2015, intervenor Robert Simpson filed a Petition for Reconsideration ("Petition") pursuant to Title 20, Section 1720 of the California Code of Regulations ("Section 1720") asking the CEC to reconsider its decision to approve the project.

The CEC held a hearing on the Petition at its Business Meeting on September 22, 2015. At the hearing, the CEC rejected the bulk of Mr. Simpson's Petition because it failed to satisfy the requirements for reconsideration under Section 1720. The Commission did, however, partially grant the Petition on a narrow issue. Out of prudence, rather than a determination that failure to distribute a copy of the PMPD to California Department of Fish and Wildlife ("CDFW") was legal error, the Commission granted partial reconsideration of its Final Commission Decision to provide the CDFW a thirty day period to review and provide comments on the Presiding Member's Proposed Decision ("PMPD") and the Final Commission Decision. (TN-206182, pp. 2-3.) On October 23, 2015, CEC Staff docketed the CDFW's comments on the PMPD and the Final Commission Decision.

Project Owner has reviewed the CDFW's comments and understands that the CDFW has made two recommendations for the Amended CECP. The first recommendation is that "a monitoring program [for the potential effects of thermal plumes on bird and bat species] be developed in coordination with the U.S. Fish and Wildlife Service and the [CDFW] and that it be implemented at the Project site." (TN-206420, p. 2.) The second recommendation is that the Biological Resources section of the PMPD summarize Project-specific information found in other sections of the document. (*Id.* at pp. 2-3.)

Project Owner believes that a bird and bat monitoring program that is responsive to CDFW's comments can be accomplished within the existing regulatory framework of the Final Commission Decision, namely through Condition of Certification BIOLOGICAL RESOURCES-6 ("BIO-6"). BIO-6 requires that Project Owner complete a Biological Resources Monitoring Implementation and Mitigation Plan ("BRMIMP"). In the BRMIMP, Project Owner must identify biological resource monitoring measures and methodologies that Project Owner has proposed and agreed to. The draft BRMIMP is provided to both CDFW and also the United States Fish and Wildlife Service ("USFWS") for comments.

Project Owner has already completed the BRMIMP for the project including providing it for comments to the CDFW and USFWS and to the CEC for approval. (Docketed by CEC Staff at TN-206434.) Project Owner submits that the monitoring program suggested by the CDFW is already contemplated by BIO-6, and Project Owner will cooperate fully with CEC Staff to revise the BRMIMP to include a bird and bat monitoring program and to recirculate the BRMIMP to USFWS and CDFW for comments.

Project Owner respectfully requests the Commission adopt this approach. At the Business Meeting at which the Commission hears and decides this matter, the Commission could indicate its preference that CEC staff require a revised BRMIMP under BIO-6. This approach would appropriately and responsively close this issue.

Regarding CDFW's comments on summarizing information in the biological resources section of the PMPD, Project Owner believes that the request should be noted and applied in the future, when proposed decisions are being prepared, but that there is no necessity nor legal requirement to modify either the PMPD or the Final Commission Decision in the present proceeding.

Dated: October 28, 2015

Locke Lord LLP

By: 

John A. McKinsey

Attorneys for Carlsbad Energy Center LLC