

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

DOCKET	
07-AFC-6	
DATE	<u>DEC 30 2008</u>
RECD.	<u>DEC 30 2008</u>

In the Matter of:)
)
 The Application for Certification)
 for the Carlsbad Energy Center)
 Project)
 _____)

Docket No. 07-AFC-06

PETITION TO INTERVENE BY
 THE CITY OF CARLSBAD AND THE REDEVELOPMENT
 AGENCY OF THE CITY OF CARLSBAD

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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:)	
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The Application for Certification)	Docket No. 07-AFC-06
for the Carlsbad Energy Center)	
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_____)	

Petition to Intervene by the
City of Carlsbad

The City of Carlsbad ("City") hereby petitions to intervene in the above-referenced proceeding, under the authority of sections 1207 and 1712 of Title 20 of the California Code of Regulations.

The City of Carlsbad is situated on the Pacific Coast of California, approximately 35 miles north of San Diego. The proposed Carlsbad Energy Center Project (CECP) is located within the City. Although the City has tried to convince the CECP that an inland location would be consistent with the City's Land Use regulations, and would avoid significant adverse environmental impacts, the CECP has to date resisted this effort. The City was hopeful that the CEC Staff Preliminary Staff Analysis (PSA) would support the City's position, but the recently-issued PSA does not do this and thus the City is left to make the following points as an intervener:

The City anticipates presenting at least six issues to the Committee:

- 1) Land Use. The proposed project is inconsistent with city land use regulations. The PSA discusses the City's interpretation of its own land use regulations, but then dismisses the City's interpretation. For example, the Staff recognizes that the City, if it had jurisdiction over the project,

would require an update of its Specific Plan 144. The Staff refuses to require NRG to update this planning document. The law provides that the City's interpretation of its own regulations must carry great weight. If the Energy Commission desires to "override" the City's requirements, it has the legal authority to do so. The City believes that an override is preferable to the adoption of a land use interpretation that is faulty and unjustified.

2) The California Coastal Commission has not made a "consistency" determination for the CECP. Staff recognizes that California Resources Code 30413(d) requires Coastal Commission participation in California Energy Commission proceedings (PSA page 4.5-11). The Coastal Commission staff wrote to the CEC informing it that the Coastal Commission would not participate in the CEC proceedings, apparently due, in part, to financial constraints. The City does not believe that an agency can escape its legal requirements in this manner. The City is also concerned that the Staff is putting the Committee in a difficult position. To quote from the Staff's Status Report #4 in the Moss Landing proceeding (99-AFC-4): "The Coastal Commission is not planning to make this finding until after our process is complete. This puts the Committee in the potentially awkward position of ruling on the merits of the project without the findings of consistency/non-consistency from the Coastal Commission."

The City does not believe that the Coastal Commission will determine that the CECP is consistent with the Coastal Act. The PSA argues that the CECP is consistent because it will use the water supply of the existing electric generating units (PSA page 4.5-12). The use of ocean water is no longer required for electric generating units. But using Staff's logic, NRG could locate any industry, such as a feed lot, an industrial car wash, an amusement park, an oil refinery or a power plant on the coast and if it used water drawn from the ocean by the existing power plant it would be consistent with the Coastal Act.

3) Visual Impacts. The visual impacts resulting from construction of the project will be significant. The Staff, in its PSA, assesses the visual impacts against the background of the existing Encina units 1-5, determining that the impacts to homes and the lagoon would be moderate because

the project “would be visually subordinate to the much larger and more prominent EPS.” (PSA, page 4.12-13) The PSA must also consider the impacts without the existing plant, a reasonably foreseeable event, likely to occur within the first few years after construction of the CECP. Indeed, dismantling and removing the existing power plant when its power is no longer needed should be a condition to this license, if granted. It is foreseeable that the citizens of Carlsbad will view the CECP, not against the backdrop of the existing 400 foot stack and 200 foot building, but against a 40 foot commercial/recreational development for 27 of the 40 year project life. The PSA must reflect this analysis. Even without this analysis, the project will cause an unmitigatable significant adverse impact on a significant permanent and transitory population.

4) Conflicts with Proposed Important Local Projects. There are several important local public works projects (e.g. the Coastal Rail Trail, the Sewer Lift Station and pipeline alignment) that will require relocation of the proposed power plant. The City Council of the City of Carlsbad has approval authority over them. The license to operate a power plant cannot authorize the project applicant to encroach on public property without permission. The City Council intends to acquire the right-of-way and proceed with those projects according to law.

5) Alternatives. Due, in large part, to the City’s belief that the CECP will cause significant, adverse, impacts that cannot be mitigated, a more thorough alternatives analysis is necessary. Additionally, Staff should not use project timing to dismiss alternatives – delays resulting from a developer’s inability to define its own project should not influence the alternatives analysis.

X

X

X

6) Required Permits. Finally, the PSA does not address the ability of the CECP to obtain required State Lands Commission approval. The City intends to raise this issue with the CEC Staff.

For these reasons, the City seeks intervention status.

Dated: December 30, 2008

Respectfully submitted

s/s Allan J Thompson
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One of Counsel
City of Carlsbad

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Declaration of Service

I, Allan J Thompson, declare that on December 30, 2008 I deposited a copy of the attached "Petition to Intervene by the City of Carlsbad and the Redevelopment Agency of the City of Carlsbad" in the United States mail with first class postage thereon fully prepaid and addressed to the Energy Commission docket office and sent transmission by electronic mail consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5 and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

s/s Allan J Thompson
Allan J. Thompson

STATE OF CALIFORNIA

California Energy Resources Conservation
and Development Commission

Application for Certification)
for the Carlsbad Energy)
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Docket 07-AFC-6

Certificate of Service

CALIFORNIA ENERGY COMMISSION

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