



RONALD R. BALL
CITY ATTORNEY

JANE MOBALDI
ASSISTANT CITY ATTORNEY

CITY OF CARLSBAD

1200 CARLSBAD VILLAGE DRIVE
CARLSBAD, CALIFORNIA 92008-1949
(760) 434-2891
FAX: (760) 434-8367

RONALD KEMP
DEPUTY CITY ATTORNEY

PAUL G. EDMONSON
DEPUTY CITY ATTORNEY

August 8, 2008

Mike Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento CA 95814

DOCKET	
07-AFC-6	
DATE	AUG 08 2008
RECD.	AUG 08 2008

Re: Carlsbad Energy Center Project (07-AFC-6)

Dear Mr. Monasmith:

I am writing you to bring to your attention a procedural matter that must be solved before the State Energy Resources Conservation and Development Commission ("Commission") can issue the preliminary report required by Public Resources Code section 25510. The reason for this is that the Coastal Commission has declined to prepare the written report on the suitability of the proposed site and related facilities within the Coastal Zone as required by Public Resources Code section 30413(d)(f). The Executive Director of the California Coastal Commission declined to participate or prepare the report as required by law because of budget difficulties (see letter of July 15, 2008 enclosed). As I pointed out in my letter of July 28, 2008 (copy enclosed), budgetary constraints are not sufficient reasons to avoid statutory obligations. I have had no response to that letter.

Until the Coastal Commission's report is issued and considered by the Commission, I do not believe the Summary and Hearing Order referred to in Public Resources Code section 25510 can proceed.

The need for this report is especially important in these proceedings since the site of the proposed project is within an area of the Coastal Zone that we believe is inconsistent with the Coastal Act and its local implementation by the City of Carlsbad. We believe both the Commission and the City of Carlsbad would benefit greatly from the issuance of this statutorily required report.

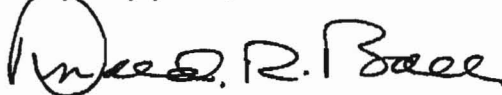
We understand that some of the Coastal Commission's participation is discretionary (see Public Resources Code section 30413(e)) but its participation in other parts of the proceedings are mandatory as well as the report or reports and comments on the project as it relates to the Coastal Zone or Coastal Zone resources.



Please let me know how you intend to obtain the Coastal Commission's participation and required reports prior to issuing the preliminary staff report (which I take to mean the Summary Hearing and Order).

I appreciate your cooperation and courtesy in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald R. Ball". The signature is written in a cursive style with a large initial "R" and "B".

RONALD R. BALL
City Attorney

m/enclosure

c: Proof of Service List (attached)

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



July 15, 2008

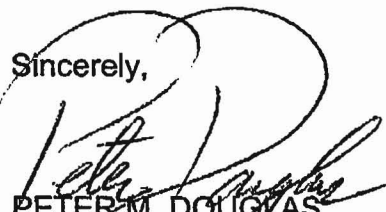
City of Carlsbad
Joe Garuba, Municipal Project Manager
1200 Carlsbad Village Drive
Carlsbad, CA 92008-1989

Re: Coastal Commission Review of Application for Certification of
the Carlsbad Energy Center Project

Dear Mr. Garuba:

I am in receipt of your July 8 letter requesting that we reconsider our prior decision not to participate in the review of the Application for Certification of the Carlsbad Energy Center Project pending before the California Energy Commission. While we appreciate the City's concerns and understand the coastal resource issues involved, due to severe budget reductions, staffing constraints and workload we have been forced to make priority choices in allocating staff workload. Unfortunately, we simply can no longer attend to many important coastal resource protection issues that an adequately funded state coastal management program should be able to address. Accordingly and regrettably, we are not in a position to respond favorably to your request. We appreciate your understanding our situation and dilemma.

Sincerely,



PETER M. DOUGLAS
Executive Director

cc: Alison Dettmer, Energy and Ocean Resources Manager



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CITY ATTORNEY

JANE MOBALDI
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CARLSBAD, CALIFORNIA 92008-1949
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FAX: (760) 434-8367

RONALD KEMP
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PAUL G. EDMONSON
DEPUTY CITY ATTORNEY

July 28, 2008

Peter M. Douglas, Executive Director
California Coastal Commission
45 Fremont Street Suite 2000
San Francisco CA 94105-2219

Re: Coastal Commission Review of Application for Certification of the Proposed Carlsbad Energy Center Project, Carlsbad, California

Dear Mr. Douglas:

Your letter of July 15, 2008 addressed to Joe Garuba, Municipal Project Manager has been referred to me for response. According to your letter you cannot review the Application for Certification of the Carlsbad Energy Project because of budget reductions, staffing constraints and workload considerations. While we appreciate such difficulties and understand the economic uncertainties due to the State's budgetary constraints, such considerations do not allow a public entity to avoid its statutory obligations. In this case, Public Resources Code section 30143(d) is clear and compels participation in a report by a commission. That section states in relevant part:

"Whenever the State Energy Resources Conservation and Development Commission exercises its citing authority.... with respect to any thermal power plant to be located....within the Coastal Zone, the (coastal) commission shall participate in those proceedings and shall receive from the State Energy Resources Conservation and Development Commission any notice of intention to file an application for certification of a site and related facilities within the Coastal Zone. The commission shall analyze each notice of intention and shall prior to completion of the preliminary report required by section 25510, forward to the (Energy Commission) a written report on the suitability of the proposed site and related facilities specified in that notice....." (emphases added).

That section goes on to outline the contents of the report.

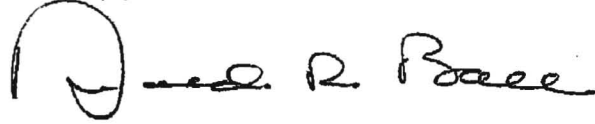
I respectfully request that you direct your staff to fulfill the statutory responsibilities or, alternatively, turn this letter over to your attorneys for advice on this matter.

Please give this matter your immediate attention because, as we understand it, the Energy Commission staff will be preparing its preliminary staff analysis soon and that will require consideration of your statutory report.



Should you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald R. Ball". The signature is written in a cursive style with a large, looped initial "R".

RONALD R. BALL
City Attorney

rn

c: Arlene Ichien, Esq.
Jonathan Blee, Esq.
Alan Thompson, Esq.
Joe Garuba, Municipal Projects Manager



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

APPLICATION FOR CERTIFICATION
FOR THE **CARLSBAD ENERGY CENTER**
PROJECT

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 7/31/2008)

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

David Lloyd
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
David.Lloyd@nrenergy.com

Tim Hemig, Vice President
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
Tim.Hemig@nrenergy.com

APPLICANT'S CONSULTANTS

Robert Mason, Project Manager
CH2M Hill, Inc.
3 Hutton Centre Drive, Ste. 200
Santa Ana, CA 92707
robert.Mason@ch2m.com

Megan Sebra
CH2M Hill, Inc.
2485 Natomas Park Drive, Ste. 600
Sacramento, CA 95833
Megan.Sebra@ch2m.com

COUNSEL FOR APPLICANT

John A. McKinsey
Stoel Rives LLP
980 Ninth Street, Ste. 1900
Sacramento, CA 95814
jamckinsey@stoel.com

INTERESTED AGENCIES

*California ISO
P.O. Box 639014
Folsom, CA 95763-9014
e-recipient@caiso.com

City of Carlsbad
Joseph Garuba,
Municipals Project Manager Manager
Ron Ball, Esq., City Attorney
1200 Carlsbad Village Drive
Carlsbad, CA 92008
jgaru@ci.carlsbad.ca.us
rball@ci.carlsbad.ca.us

Allan J Thompson
Attorney for the City
21 "C" Orinda Way #314
Orinda, CA 94563

INTERVENORS

California Unions for Reliable Energy ("CURE")
Suma Peesapati
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
spesapati@adamsbroadwell.com

Mike Monasmith
Siting Project Manager
mmonasmi@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

ENERGY COMMISSION

Public Advisor's Office
pao@energy.state.ca.us

JAMES D. BOYD
Commissioner and Presiding Member
jboyd@energy.state.ca.us

KAREN DOUGLAS
Commissioner and Associate Member
kldougl@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

DECLARATION OF SERVICE

I, Robin Nuschy, declare that on 8-8-08, I deposited copies of the attached Letter in the United States mail at Carlsbad with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was 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.

Robin Nuschy