

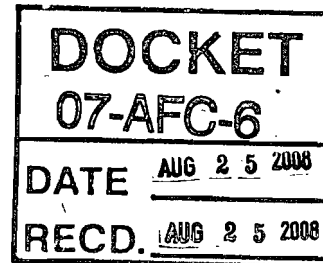


980 Ninth Street, Suite 1900  
Sacramento, California 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

JOHN A. MCKINSEY  
Direct (916) 319-4746  
jamckinsey@stoel.com

August 25, 2008

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



Re: **Carlsbad Energy Center Project (07-AFC-6)**  
**Lack of Issues Related to Coastal Commission Non-Participation**

Dear Mr. Monasmith:

This letter responds to the City of Carlsbad's ("City") August 8, 2008 letter to your office. The City's letter inaccurately asserts that (1) the California Coastal Commission ("Coastal Commission") is obligated to prepare a written report on the suitability of the Carlsbad Energy Center Project's ("CECP") location within the Coastal Zone pursuant to Public Resources Code section 30413(d), and (2) the summary and hearing order set forth in Public Resources Code section 25510 cannot proceed until the Coastal Commission submits this report to your office.

The City's contentions are simply incorrect and inapplicable to CECP's permitting proceedings. This letter addresses the City's assertions, clarifies the various permitting proceedings conducted by the California Energy Commission ("CEC"), and explains the limited nature and extent of the Coastal Commission's role in this case.

Although the Coastal Commission normally has permitting authority with regard to projects located in the Coastal Zone, the CEC has exclusive jurisdiction to permit certain thermal power plants throughout the state, including those, such as CECP, within the Coastal Zone. (Pub. Resources Code § 25500.) Public Resources Code section 30413 establishes the interagency relationship between the Coastal Commission and the CEC in the permitting proceedings for facilities located in the Coastal Zone. The scope of the Coastal Commission's role in the permitting process is defined by the nature of the particular permitting proceeding. (Pub. Resources Code § 30413(d), (e).)



Mike Monasmith  
Siting Project Manager  
California Energy Commission  
August 25, 2008  
Page 2

The Warren-Alquist Act distinguishes between the types of permitting proceedings that may be conducted by the CEC. For example, a Notice of Intention to Submit an Application for Certification (“NOI proceedings”) generally analyzes the suitability of potential locations to site a new facility. (Pub. Resources Code § 25503.) Application for Certification (“AFC”) proceedings analyze whether a particular site and related facility are suitable for certification, and may or may not follow NOI proceedings. (Pub. Resources Code § 25519.) For certain projects, such as CECP, only the AFC procedure is required for certification of a power plant and related facilities (“AFC-Only proceedings”). (Pub. Resources Code § 25540.6.) Public Resources Code section 25540.6, which governs AFC-Only proceedings, specifically provides:

Notwithstanding any other provision of law, *no notice of intention is required*, and the [CEC] shall issue its final decision on the application, as specified in Section 25523, within 12 months after the filing of the application for certification of the powerplant and related facility or facilities ... for any of the following....

(Pub. Resources Code § 25540.6 (emphasis added).)

Accordingly, the NOI requirement is specifically eliminated in AFC-Only proceedings. The City’s letter mistakenly suggests that requirements applicable to NOI proceedings govern the AFC-Only proceedings here. Nothing in the Warren-Alquist Act or Coastal Act supports this interpretation.

As the Coastal Act makes clear, the Coastal Commission report referenced by the City must be prepared for NOI proceedings. Public Resources Code section 30143(d), which the City cites, provides in pertinent part:

Whenever the [CEC] exercises its siting authority and undertakes proceedings pursuant to the provisions of Chapter 6 (commencing with Section 25000) of Division 15 with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the coastal zone, the [Coastal Commission] shall participate in those proceedings and *shall receive from the [CEC] any notice of intention to file an application for certification of a site and related facilities within the coastal zone. The [Coastal Commission] shall analyze each notice of intention and shall, prior to the completion of the preliminary report required by Section 25510, forward to the [CEC] a written report on the suitability of the proposed site and related facilities specified in that notice....*



Mike Monasmith  
Siting Project Manager  
California Energy Commission  
August 25, 2008  
Page 3

(Pub. Resources Code § 30413(d) (emphasis added).)

Thus, the report to which the City refers is required only for NOI proceedings. Likewise, the summary and hearing order referenced in Public Resources Code section 30413(d) and set forth in Public Resources Code section 25510<sup>1</sup> is part of the procedure for NOI proceedings.<sup>2</sup> Thus, the City's claim that the summary and hearing order cannot proceed is equally inapposite.

Lastly, Public Resources Code section 30413 draws a clear distinction between the Coastal Commission's role in NOI proceedings and other proceedings. Section 30413(e) states:

The [Coastal Commission] *may, at its discretion*, participate fully in *other* proceedings conducted by the [CEC] pursuant to its powerplant siting authority. In the event the [Coastal Commission] participates in any public hearings held by the [CEC] it shall be afforded full opportunity to present evidence and cross-examine witnesses.

---

<sup>1</sup> Public Resources Code section 25510 provides:

After the conclusion of such hearings, and no later than 150 days after filing of the notice, the commission shall prepare and make public a summary and hearing order on the notice of intention to file an application. The commission may include within the summary and hearing order any other alternatives proposed by the commission....

(Pub. Resources Code § 25510.)

<sup>2</sup> In contrast, AFC-Only proceedings are governed by separate provisions of the Warren-Alquist Act, which do not require summary and hearing order, or the Section 30413(d) report. Although Public Resources Code section 25523 (which governs the written decision on applications for certification that follow NOI proceedings) references the Section 30413(d) report, and contemplates that written findings on the application for certification may incorporate provisions from this report, there is no such reference to the Section 30413(d) report for AFC-Only proceedings. (Pub. Resources Code § 25523(b).)



Mike Monasmith  
Siting Project Manager  
California Energy Commission  
August 25, 2008  
Page 4

(Pub. Resources Code § 30413(e) (emphasis added).) Public Resources Code section 30413(e) removes any doubt about the Coastal Commission's role in permitting for CECP, because it confirms that the Coastal Commission may, but is not obligated to, participate in non-NOI proceedings. The Coastal Commission exercised this statutory discretion by agreeing to prepare an equivalent of a section 30413(d) report in its earlier Memorandum of Agreement ("MOU") with the CEC. The MOU does not change the statutory requirements. Moreover, the Coastal Commission's decision not to prepare any report for CECP is completely within the Coastal Commission's statutory discretion under 30413(e). Indeed, the Coastal Commission's October 16, 2007 letter to your office cites multiple reasons to support its discretion to not submit a Section 30413(d) report, including CECP's employment of technology that would reduce many of the Coastal Commission's previous environmental concerns associated with coastally-located power plants.

If you have any questions regarding this letter, please do not hesitate to contact me.

Very truly yours,

*John A. McKinsey*  
John A. McKinsey

JAM:kjh

cc: See Proof of Service

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA**

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

**Docket No. 07-AFC-6 PROOF OF  
SERVICE  
(Revised 4/1/2008)**

**Correspondence and CD-Rom to San Diego Pollution Control District re Revised Air Modeling for the  
Carlsbad Energy Center Project**

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 07-AFC-6  
1516 Ninth Street, MS-14  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**APPLICANT**

David Lloyd  
Carlsbad Energy Center, LLC  
1817 Aston Avenue, Suite 104  
Carlsbad, CA 92008  
[David.Lloyd@nrgenergy.com](mailto:David.Lloyd@nrgenergy.com)

Tim Hemig, Vice President  
Carlsbad Energy Center, LLC  
1817 Aston Avenue, Suite 104  
Carlsbad, CA 92008  
[Tim.Hemig@nrgenergy.com](mailto:Tim.Hemig@nrgenergy.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](mailto:robert.Mason@ch2m.com)

Megan Sebra  
CH2M Hill, Inc.  
2485 Natomas Park Drive, Ste. 600  
Sacramento, CA 95833  
[Megan.Sebra@ch2m.com](mailto:Megan.Sebra@ch2m.com)

**COUNSEL FOR APPLICANT**

John A. McKinsey  
Stoel Rives LLP  
980 Ninth Street, Ste. 1900  
Sacramento, CA 95814  
[jamckinsey@stoel.com](mailto:jamckinsey@stoel.com)

**INTERESTED AGENCIES**

Larry Tobias  
Ca. Independent System Operator  
151 Blue Ravine Road  
Folsom, CA 95630  
[LTobias@caiso.com](mailto:LTobias@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](mailto:jgaru@ci.carlsbad.ca.us)  
[rball@ci.carlsbad.ca.us](mailto: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  
[speesapati@adamsbroadwell.com](mailto:speesapati@adamsbroadwell.com)

Dick Ratliff  
Staff Counsel  
[dratliff@energy.state.ca.us](mailto:dratliff@energy.state.ca.us)

Public Advisor's Office  
[pao@energy.state.ca.us](mailto:pao@energy.state.ca.us)

**ENERGY COMMISSION**

JAMES D. BOYD  
Commissioner and Presiding Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

KAREN DOUGLAS  
Commissioner and Associate Member  
[kldougla@energy.state.ca.us](mailto:kldougla@energy.state.ca.us)

Paul Kramer  
Hearing Officer  
[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)

Mike Monasmith  
Siting Project Manager  
[mmonasmi@energy.state.ca.us](mailto:mmonasmi@energy.state.ca.us)

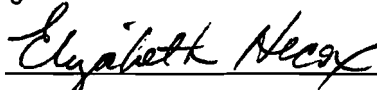
**DECLARATION OF SERVICE**

I, Denise M. Morison, declare that on August 25, 2008, I deposited copies of the attached document in the United States mail at Sacramento, California, 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.

  
\_\_\_\_\_  
Elizabeth Hecox