

RONALD R. BALL CITY ATTORNEY

JANE MOBALDI ASSISTANT CITY ATTORNEY

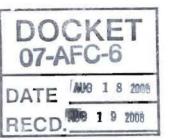
August 18, 2008

Mike Monasmith Siting Project Manager California Energy Commission 1516 Ninth Street Sacramento CA 95814 1200 CARLSBAD VILLAGE DRIVE CARLSBAD, CALIFORNIA 92008-1949 (760) 434-2891 FAX: (760) 434-8367

CITY OF CARLSBAD

RONALD KEMP DEPUTY CITY ATTORNEY

PAUL G. EDMONSON DEPUTY CITY ATTORNEY



Re: Coastal Commission Review of Application for Certification of the Proposed Carlsbad Energy Center Project (07-AFC-6)

Dear Mr. Monosmith:

This is a follow up to my letter of August 8, 2008 to you regarding the necessity of the Coastal Commission's participation in these proceedings and the necessity of receiving its report prior to your preparation of the preliminary staff analysis. I have now received a copy of Executive Director Douglas's reaffirmation of his inability to participate or prepare a written report due to the dire funding and staffing conditions at the Coastal Commission (see enclosed letter of August 14, 2008).

It seems to me this leaves the Commission, the Commission staff, the applicant and the City of Carlsbad in a difficult situation. The Commission staff needs the report to make a recommendation to its Commission, the applicant can't get approval and the City may be required to enforce these legal requirements. I don't believe that Coastal Commission's Executive Director is quarreling with the notion that participation before the Energy Commission is required by statute or even that he would participate in those proceedings and prepare the required report but for the lack of funding which represents an unfunded mandate. On the other hand, we believe it is necessary before the Commission can prepare its preliminary staff assessment or issue a license to operate.

If, as I believe, the Coastal Commission's participation and report is required by statute, and I have received no authority to the contrary, will your staff recommend a stay on the proceedings until receipt of the required report or suggest some other alternative that meets the requirements of law?

I look forward to hearing from you or your attorneys on this matter.

Very truly yours, D. D. Porce

RONALD R. BALL City Attorney

rn/enclosure

c: Proof of Service List (attached) Peter Douglas, California Coastal Commission Executive Director

STATE OF CALIFORNIA—THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

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



August 14, 2008

Ronald R. Ball City Attorney City of Carlsbad 1200 Carlsbad Village Drive Carlsbad, CA 92008-1949

RE: Coastal Commission Review of Application for Certification of the Proposed Carlsbad Energy Center Project in Carlsbad

Dear Mr. Ball:

We are in receipt of your July 28, 2008 letter received on July 30, 2008 in which you assert that the Coastal Commission must, as a matter of law, review the Application for Certification of the Carlsbad Energy Project notwithstanding the Commission's dire funding and staffing condition. As local governments are painfully aware, unfunded mandates are frustrating and often result in mandates not being carried out. Similarly, while we appreciate your position and would ourselves want to undertake this review, knowing what should be done does not translate into the necessary funding or staffing required to be able to do it. Because we have no staff to do the work you ask us to do, we are unfortunately not in a position to undertake it.

Sincerely ETER DOUGI

Executive Director

cc: California Coastal Commissioners Coastal Commission Program Directors Joe Garuba, Carlsbad Municipal Project 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)

<u>INSTRUCTIONS:</u> All parties shall 1) send an original signed document plus 12 copies <u>OR</u> 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 <u>OR</u> electronic copy of the documents that <u>shall include a proof of service declaration</u> 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@nrgenergy.com

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

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 <u>e-recipient@calso.com</u>

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 speesapati@adamsbroadwell.com

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

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

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

ENERGY COMMISSION

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

KAREN DOUGLAS Commissioner and Associate Member <u>kldougla@energy.state.ca.us</u>

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

DECLARATION OF SERVICE

Nuschy, declare that on <u>8.18.08</u>, 1 deposited copies of the attached in the United States mail at <u>Carlsbad</u> (.0. with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

<u> 0R</u>

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.

Jobi Auscy