



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 27, 2008

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

DOCKET	
07-AFC-6	
DATE	AUG 27 2008
RECD.	AUG 27 2008

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

Dear Mr. Monasmith:

I have reviewed Mr. McKinsey's August 25, 2008 letter to you responding to my August 8, 2008 letter and respectfully disagree with Mr. McKinsey's analysis. Mr. McKinsey has artfully skirted around the legislative mandates in order to support his contentions. Procedural requirements should not be supported through skillful interpretations which frustrate the purpose of the legislation especially when the plain language of the legislation is clear that the Coastal Commission participation and report is required.

As Mr. McKinsey points out in his letter, the Carlsbad Energy Center Project is proceeding under the procedures of California Public Resources Code section 25540.6 which specifies that no notice of intention is required. Section 25540.6(a) further specifies that "the commission **shall** issue its final decision on the application, **as specified in Section 25523.**" Section 25523 states:

"The commission shall prepare a written decision after public hearing on an application, which includes all of the following:

...

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 3000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible."



A careful reading of this statute makes it clear that, contrary to Mr. McKinsey's contentions, Section 25523(b) does not allow for a situation in which the Coastal Commission is exempted from issuing a report simply because no Notice of Intention was filed.¹ Furthermore since Section 25523(b) obligates the Energy Commission to make findings regarding the Coastal Act, any such findings would necessarily require input and analysis from the Coastal Commission.

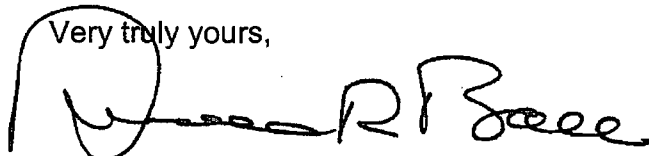
Standard statutory interpretation concludes that, if the legislature had intended to eliminate the necessity for a report from the Coastal Commission for AFC-Only proceedings, it would have included language allowing for such an exception in one of these sections. Since it did not, and since it specifically requires that the Energy Commission make findings regarding the Coastal Act, the intent of the legislature seems clearly to require the Coastal Commission's participation in every project within the coastal zone.

The Energy Commission should not issue its preliminary findings until the Coastal Commission has adequately weighed in and addressed all potential aspects of Coastal Act conformity.

In his October 16, 2007 letter, Peter M. Douglas, Executive Director of the California Coastal Commission states, "we hope [Energy Commission staff] can incorporate some aspects of Coastal Act conformity into their review."¹ This is clearly inadequate. Mr. Douglas and the Coastal Commission have an obligation to analyze the project in terms of the Coastal Act and to specify provisions which would make the project conform with the Coastal Act. And the Energy Commission has an obligation to make findings regarding any such provisions.

I appreciate your cooperation and courtesy in this matter.

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

fw

cc: Peter Douglas
Joe Garuba
Allen Thompson
Service List

¹ We also note, that the "single most contentious" issue of using seawater has been reintroduced into the project, albeit not for cooling purposes, after the Executive Director of the Coastal Commission's letter of October 16, 2007.



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@nrqenergy.com

Tim Hemig, Vice President
 Carlsbad Energy Center, LLC
 1817 Aston Avenue, Suite 104
 Carlsbad, CA 92008
Tim.Hemig@nrqenergy.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
 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
kidougl@energy.state.ca.us

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

DECLARATION OF SERVICE

I, Flora Waite, declare that on 8/27/08, I deposited copies of the attached Letter from Ronald R. Ball, in the United States mail at _____ 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.

Flora Waite