



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

December 29, 2008

Mike Monosmith, Siting Project Manager
California Energy Commission
1516 Ninth St
Sacramento CA 95814-5512

DOCKET

07-AFC-6

DATE DEC 29 2008

RECD. DEC 30 2008

RE: COMMENTS ON THE PRELIMINARY STAFF ASSESSMENT AND NOTICE OF INTENTION TO INTERVENE IN THE PROCEEDINGS

Dear Mr. Monosmith:

Thank you for your "Notice of Availability" of the Preliminary Staff Assessment (PSA) for the proposed Carlsbad Energy Center Project (07-AFC-6). Our staff will be making comments and participating in the workshop on the proposed power plant and its related supporting facilities and infrastructure.

I was disappointed to read that the PSA was completed without the statutorily required Coastal Commission report and which was the subject of my letters to you dated August 8, 2008, August 18, 2008 and August 27, 2008 (copies attached).

Additionally, we do not feel that the functional-equivalent CEQA analysis has been completed for the project. As you know, CEQA requires a cumulative analysis of all known and foreseeable projects that will affect the environment in which the proposed power plant will operate, if approved. Known and foreseeable projects include the proposed Interstate 5 widening, the proposed coastal rail trail and the proposed plant lift station and required supporting facilities. In our opinion, these projects have been inadequately considered because of the possible adverse environmental consequences when considered in connection with the proposed power plant. Indeed, the proposed coastal rail trail and the proposed pipe line alignment for the proposed sewer lift station are within the control and approval of the City Council. These facilities do not need to be relocated because of the proposed power plant but to the contrary; they require relocation of the proposed power plant.

This office has been authorized to file a petition to intervene in the proceedings and intends to do so as soon as possible and prior to the scheduled public hearings on the PSA. A petition to intervene is necessary in order for Carlsbad and the Redevelopment



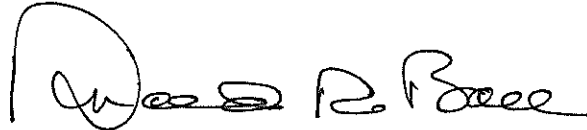
Agency to fully participate in the next phases of the proposed license to operate. No other party or intervener is to date, or likely will represent the City's interests in its land use regulations, the California Coastal Commission's lack of participation in these proceedings nor the potential adverse impacts to the environment as required to be studied under CEQA.

Members of the City Council, City staff and this office will fully participate, as appropriate, in the hearings regarding the PSA with an eye toward educating the Energy Commission staff and citizens of the future adverse environmental impacts, inconsistency with the City's land use planning and regulatory documents and conflicts with other proposed important local projects.

We look forward to participating in the PSA workshop.

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

Sincerely,

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 a distinct "Ball" at the end.

RONALD R. BALL
City Attorney

rn/attachment

c: Carlsbad Mayor and City Council Members
Carlsbad City Manager, Lisa Hildabrand
Service List



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

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.

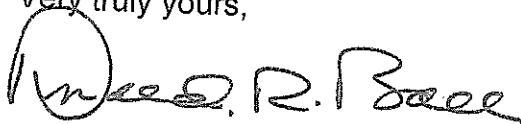
The need for this report is especially important in these proceedings since the site of the proposed project is within an area of the Coastal Zone that we believe is inconsistent with the Coastal Act and its local implementation by the City of Carlsbad. We believe both the Commission and the City of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

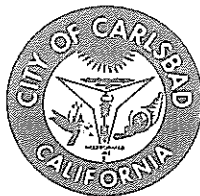
Very truly yours,

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".

RONALD R. BALL
City Attorney

m/enclosure

c: Proof of Service List (attached)



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

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

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

Dear Mr. Monasmith:

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,

A handwritten signature in black ink, appearing to read "Ronald R. Ball".

RONALD R. BALL
City Attorney

m/enclosure

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



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

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. 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.

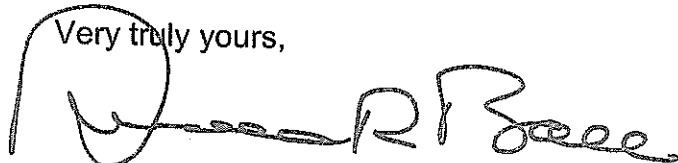
Standard statutory interpretation concludes that, if the legislature had intended to eliminate the necessity for a report from the Coastal Commission for AFC-Only proceedings, it would have included language allowing for such an exception in one of these sections. Since it did not, and since it specifically 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 12/26/2008)

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.
6 Hutton Centre Drive, Ste. 700
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

Allan J. Thompson
Attorney for the City
21 "C" Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

California ISO
P.O. Box 639014
Folsom, CA 95763-9014
(e-mail preferred) e-recipient@caiso.com

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

INTERVENORS

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

Center for Biological Diversity
c/o William B. Rostove
EARTHJUSTICE
426 17th St., 5th Floor
Oakland, CA 94612
wrostov@earthjustice.org

Power of Vision
Julie Baker and Arnold Roe, Ph.D.
P.O. Box 131302
Carlsbad, California 92013
powerofvision@roadrunner.com

Rob Simpson
Environmental Consultant
27126 Grandview Avenue
Hayward CA 94542
rob@redwoodrob.com

ENERGY COMMISSION

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

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

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

Elena Miller
Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Robin Nuschy, declare that on December 30, 2008, I served and filed copies of the attached letter regarding Comments on the Preliminary Staff Assessment and Notice of Intention to Intervene in the Proceedings as follows:

by e-mail to the email addresses set forth on the attached Proof of Service list

by depositing in the U.S. mail at Carlsbad, California with first-class postage thereon fully prepaid and addressed to **OR** _____ by personal delivery to:

all those for whom e-mailing addresses are provided on the attached Proof of Service list, **OR**

_____ all those for whom mailing addresses are provided on the attached Proof of Service list.

AND

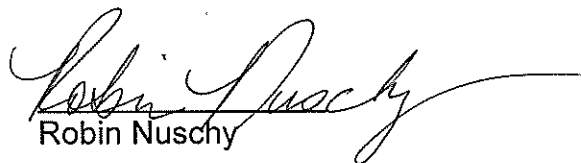
by depositing in the mail as described on the attached Proof of Service list **OR** _____ by personal delivery, to the Energy Commission Docket Unit at the following address:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-15
Sacramento CA 95814-5512

an original signed copy of the document(s) **AND**

_____ twelve (12) additional copies mailed or delivered **OR** one electronic copy of the document(s) e-mailed to docket@energy.state.ca.us

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


Robin Nuschy