

#34

Bry Laurie Myown • 776 Raymond Avenue • Long Beach CA 90804-4628
 (562) 433-0233 • brymyown@webuniverse.net

May 11, 2004

The Hon. Beverly O'Neill
 Members of the City Council
 333 West Ocean Boulevard, 14th Floor
 Long Beach, CA 90802

Re: Item 34, Request for Status Report on Liquefied Natural Gas Facility

Madam Mayor and Members of the Council:

I wish to express my deep appreciation to Councilwoman Reyes-Uranga for requesting a status report on Mitsubishi's pending application to construct a liquefied natural gas facility in the Port of Long Beach.

Similar applications have been so controversial as to draw hundreds of residents to meetings in other cities. Long Beach has escaped controversy by putting the application in the hands of an unelected Harbor Commission and by authorizing contract negotiations between Mitsubishi and a municipal utility, on which perhaps you did not plan to vote until *after* other agencies have issued permits. One problem with this approach is that staff and your attorney may fail to keep you yourselves informed of project status for fear that the public is entitled to see their communications to you. Fortunately, you and the public may keep abreast of project status through the Federal Energy Regulatory Commission's e-library for Docket No. cp04-58.

The status of the project is that FERC and your harbor department are processing applications from, and your utility is conducting secret pipeline and contract negotiations with, a Mitsubishi corporation that the California Public Utilities Commission has told you has not complied with California law.

Because you did not step in when your harbor departments continued processing a deficient application and your utility department continued negotiating with a scofflaw, the CPUC was forced to protest. That set the stage for FERC to issue an Order Asserting Exclusive Jurisdiction, which is the subject of protests by the CPUC, Coastal Commission, AQMD and two volunteer organizations. The city has also protested the FERC Order, but only on the grounds that it seeks to escape Federal oversight of a pipeline it says you have already planned to build. You have ignored the California question.

The status of the protests is that FERC is expected to rule on May 26, and we do not have time to wait for a status report. If FERC again asserts jurisdiction, California and the Administration will go to court on a matter that could preempt states' and municipalities' rights across the nation.

The Harbor Department has muddied the waters by saying it controls the final decision. It can deny the application only because it is the landlord. Many cities whose councils have been jammed by hundreds of speakers, and all cities near offshore applications are not so lucky, because the land in question is in private hands or territorial waters.

The Hon. Beverly O'Neill
Members of the Council
May 11, 2004
Page Two

61

FILED
WITH CITY COUNCIL

MAY 11 2004

CITY CLERK

Mitsubishi has muddied the waters by telling the Coastal Commission and AQMD that it will apply for their permits. But if FERC prevails, it will occupy the field and tell future applicants those bodies have no power.

So the status of this project is that it has put municipal home rule, states rights and California law in jeopardy. Cities and states up and down the west coast and across the Eastern seaboard and Gulf of Mexico are watching Long Beach to see whether they will lose all rights in siting LNG facilities. The irony is that in the past, many would have viewed any jurisdictional dispute as an instance of the Bush White House sticking it to California. Now, the record is clear that Long Beach is sticking it to the nation.

California law *is* California law unless and until an appellate court rules otherwise. Each of you and your Commissioners swore an oath of office to uphold the California constitution. Yet when a constitutionally created agency of the State of California put you on notice concerning California's requirements, you told them to take a hike and refused to enforce California law.

You must each decide whether you want your colleagues in the U.S. Conference of Mayors and U.S. League of Cities to look you in the eye and ask why you threw their rights away.

But the people of California, who created a constitution and Utility and Coastal Commissions did not give you Charter powers to undo their creations. The people of Long Beach did not elect you to deprive us of our rights by second-guessing how an appellate court might rule.

If the Administration wants to grab power, let the Administration sue California. Your job is to uphold the California constitution and enforce California law.

You must do that before May 26.

You must put these resolutions on next week's agenda:

- **instruct your harbor departments to enforce California law and halt the application.**
- **instruct your utility department to enforce California law and halt negotiations.**
- **instruct Mitsubishi not to come back to town until it is ready to follow California law.**
- **instruct FERC that if it wants to deprive Californians of our constitutional protections it can do so without your help.**

Sincerely,

Bry Laurie Myoun