

DOCKETED

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SETTLEMENT AGREEMENT AND RELEASE
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The California Energy Commission (“Energy Commission” or “Commission”) and El Segundo Energy Center, LLC (“ESEC, LLC”) as owner of the El Segundo Energy Center (“ESEC” or “Facility”), enter into this Settlement Agreement and Release (“Agreement”).

I. INTRODUCTION

1. Pursuant to California Public Resources Code section 25500, the Energy Commission “shall have the exclusive power to certify all sites and related facilities in the state.” A “facility” includes any thermal power plant with generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. (Pub. Resources Code §§ 25110, 25120.)
2. The ESEC is a 4-unit, 560-megawatt Rapid Response Combined-Cycle, dry-cooled facility located in the city of El Segundo, Los Angeles County. The project was certified by the CEC on July 1, 2010 and began commercial operation on August 1, 2013. The Final Commission Decision (00-AFC-14C “Final Decision”) governs the construction and operation of the Facility.
3. Pursuant to Public Resources Code section 25532, the Energy Commission has established a monitoring system to assure that any facility certified by the Commission is constructed and operated in compliance with applicable laws and conditions specified in the Commission Decision certifying such Facility.
4. Pursuant to California Code of Regulations, title 20, section 1770, the Energy Commission is to provide adequate monitoring of all conditions and measures set forth in the Final Decision required to mitigate potential impacts and to assure that facilities are constructed and operated in compliance with all applicable laws including, but not limited to, air quality, water quality, and public health and safety laws, ordinances, regulations, and standards (“LORS”).
5. Pursuant to California Code of Regulations, title 20, section 1769, after a license becomes effective, “the owner shall petition the commission for any change it proposes to the project design, operation, or performance requirements.”
6. Pursuant to Public Resources Code section 25534, subdivision (b), the Energy Commission may after notice and a hearing administratively impose a civil penalty against a facility owner for reasons that include significant failure to comply with the terms or conditions of approval of the application for certification, as specified by the Commission in its written decision. Any civil penalty shall be imposed in accordance with section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation. A civil penalty may be increased by an amount not to exceed \$1,500 for each day the violation occurs or persists, but the total per day penalties may not exceed fifty thousand dollars (\$50,000).

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7. The Parties share the common objective of ensuring that the fire protection systems at the Facility operate in a safe and reliable manner. ESEC, LLC cooperated with the Commission throughout the Commission's investigation and has submitted all documents requested by Commission staff and Commission staff and ESEC, LLC staff participated in numerous meetings.

II. INVESTIGATION

1. On December 12, 2022, the CEC staff (staff) issued a Compliance Advice Letter (CAL) to ESEC, LLC notifying it that an investigation was underway for potential violations of its conditions of certification and LORS following staff's October 4, 2022, compliance inspection.

2. On January 13, 2023, staff issued ESEC, LLC another CAL requesting the facility's quarterly inspection, testing and maintenance (ITM) records for the plant's water-based fire protection systems for the period from October 2017 to October 2022. Staff reviewed the records ESEC, LLC submitted in response and found no records for quarterly ITM for the water-based fire protection systems.

III. INVESTIGATION FINDINGS

1. CEC staff's investigation included calls and discussions with ESEC, LLC personnel and a review of all relevant documents. Based on this information, staff determined that ESEC, LLC failed to complete the required quarterly ITM for the pre-action sprinkler systems and the deluge sprinkler systems water spray in the years 2017 through 2022, in violation of the Condition of Certification GEN-1.
2. On March 15, 2023 CEC staff sent ESEC, LLC a Notice of Violation alleging that ESEC, LLC was out of compliance with Condition of Certification GEN-1 in the years 2017 through 2022 and the applicable laws, ordinances, regulations, and standards (LORS) related to the lack of the required inspection, testing, and maintenance (ITM) for its water-based fire protection systems.

IV. RESPONSE TO COMMISSION INVESTIGATION

1. ESEC, LLC has worked cooperatively with Energy Commission staff since the March 15, 2023 Notice of Violation.
2. Given ESEC, LLC's continuing and diligent cooperation, the Energy Commission staff and ESEC, LLC believe that rather than engaging in formal adjudication, it would be more productive to enter into this Agreement to allow the Parties to focus on ensuring that operations at ESEC remain safe, reliable, and compliant.
3. In developing this Agreement, the Commission considered the cooperation of ESEC, LLC, the facts developed by the Energy Commission staff and ESEC, LLC

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during the course of the investigation and applied the relevant factors in Public Resources Code Section 25534.1(e), to determine that settlement, rather than formal adjudication, is a more appropriate use of the Commission's and ESEC, LLC's collective resources.

4. Without disputing or admitting any of the Energy Commission Staff's allegations, ESEC, LLC has agreed to enter into this Agreement for the purpose of settlement and resolution of these matters with the Commission.

V. TERMS

To resolve the above-described alleged violations and terminate and settle these matters, and in consideration of Energy Commission staff not pursuing an administrative action under Public Resources Code section 25534 or otherwise seeking legal redress against ESEC, LLC for the above-described alleged violations, the Energy Commission and ESEC, LLC agree as follows:

1. ESEC, LLC shall execute the Agreement and provide a copy no later than thirty (30) days to the attention of:

Elizabeth Huber
Deputy Director, Siting Transmission and Environmental Protection
Division California Energy Commission
715 P Street
Sacramento, CA 95814

2. ESEC, LLC shall submit to the California Energy Commission a payment in the amount of \$150,000 (the "Settlement Amount") to settle these matters. The settlement payment is due within 30 days after ESEC, LLC receives written notification by the Commission's Compliance Project Manager ("CPM") of the execution of the Settlement Agreement by the Executive Director. Payment shall be made by electronic transfer to the California Energy Commission. Banking information and instructions necessary to complete the electronic transfer shall be provided to ESEC, LLC by the Energy Commission.
3. This Agreement shall apply to and be binding upon ESEC, LLC and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiaries, affiliates, and parent corporations and entities (provided that ESEC, LLC shall be solely responsible for payment of the Settlement Amount in accordance with Section 2 above), and upon the Energy Commission and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
4. This Agreement shall constitute the full and final settlement of the matters identified in Sections I, II and III herein, subject to ESEC, LLC's payment of the Settlement Amount.

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5. In consideration for ESEC, LLC's entry into this Agreement and for the one-time payment of the Settlement Amount, the Commission hereby releases ESEC, LLC and its principals, directors, officers, receivers, trustees, agents, employees, shareholders, subsidiaries, affiliates, parent corporations and entities, predecessors, successors and assignees from any and all claims for violations of the Warren-Alquist Act, the Commission's Regulations, the Final Decisions, LORS, and applicable fire codes, for the matters identified in Sections I, II and III above (the "Release").
6. ESEC, LLC does not admit, and this Agreement does not constitute an admission by ESEC, LLC as to any of the Energy Commission Staff's allegations outlined herein or in the course of the investigation, and further does not constitute an admission by ESEC, LLC that it violated the Conditions of Certification contained in the Final Decision or any other law, ordinance, regulation or standard applicable to the ESEC.
7. ESEC, LLC will file a petition with the CEC for any change in operation, design, or performance of the ESEC. ESEC, LLC reserves the right to contest the use of this Agreement in any other matter or proceeding except in a proceeding to enforce the Agreement itself.
8. Except to the extent required by law, neither Party shall disclose any confidential information provided in support of this Agreement unless (a) written permission to do so has been provided by the Party providing the information, or (b) disclosure is required by law. To be confidential, information must be marked with wording such as "Confidential," "Proprietary," "Trade Secret," or other terms sufficient to provide notice of the confidential nature of such information. In connection with requests for disclosure under law to the extent allowed by law, the disclosing Party will use reasonable efforts to: (i) notify the other Party prior to any disclosure of confidential information, and (ii) reasonably cooperate with the other Party's efforts to prevent or limit such disclosure.
9. This Agreement constitutes the entire agreement and understanding between the Parties and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind regarding the matters herein, whether written or oral, between the Energy Commission and ESEC, LLC.
10. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
11. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

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12. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
13. Any civil litigation to enforce this Agreement shall be filed in the Superior Court of California, County of Sacramento.
14. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
15. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
16. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.
17. The undersigned represent that they have the authority to execute this Agreement.
18. This Agreement is effective upon the last date of execution by all of the undersigned.
19. The Parties agree that pdf signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

California Energy Commission

El Segundo Energy Center, LLC

By: 

By: 

Name: Drew Bohan

Name: Daniel Summa

Title: Executive Director

Title: Vice President

Date: August 20, 2024

Date: August 12, 2024