

DOCKETED

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CALIFORNIA ENERGY COMMISSION1518 NINTH STREET
SACRAMENTO, CA 95814-5512

December 18, 2007

Mr. Lee Genz
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P.O. Box 690
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Condition of Certification LAND-2: Disposition of \$250,000 Endowment Fund and Energy Commission Staff Approval of a Change to the Verification for LAND-2

Dear Mr. Genz:

This letter addresses the completion of condition of certification **LAND-2** for the Moss Landing Power Plant and an Energy Commission staff approved change to the verification for this condition as explained below. I have enclosed a copy of the complete condition from the November 2000 Commission Decision on the Application for Certification for the Moss Landing Power Plant, with the approved changes indicated.

LAND-2 contains three sections. Section (1) requires that an environmental assessment of a proposed Elkhorn Slough Circle Trail be completed to determine how current and future visitation to the area can be accommodated without compromising resource and species protection objectives for the slough. Section (2) requires (in part) that should the environmental assessment conclude that additional visitors can be accommodated by means of the proposed Elkhorn Slough Circle Trail, or portions thereof, the project owner shall provide an endowment of two hundred and fifty thousand dollars (\$250,000). Section (3) requires that should the environmental assessment conclude that additional visitors cannot be accommodated without compromising adopted resource and species protection objectives for the Slough, the project owner shall meet with the CPM and representatives of the Elkhorn Slough Foundation and the California Coastal Commission to determine a mutually agreeable, alternative coastal access program(s) to receive the \$250,000 endowment.

The May 8, 2007 Elkhorn Slough Extended Trail Network Environmental Assessment (EA) satisfied sections (1) and (2) of **LAND-2**. The EA concluded that creating a proposed Elkhorn Slough Circle Trail is not feasible at this time, due both to the potential for environmental impacts and to the estimated capital and management costs to complete the trail. The EA proposed establishing an endowment, as directed, and focused on the "alternative coastal access programs" of the Elkhorn Slough National Estuarine Research Reserve and the Kirby Park Wheelchair Access Path.

On December 5, 2007, Energy Commission and Coastal Commission staff, Mark Silberstein of the Elkhorn Slough Foundation (Foundation), and Lee Genz of Dynegy Moss Landing, LLC (Dynegy) met to discuss the EA findings and the prospective

Mr. Lee Genz
December 18, 2007
Page 2

recipient of the endowment funds to be provided by Dynegy Moss Landing, LLC to fulfill the requirements of section (3) of **LAND-2**. This discussion also covered the need for staff to approve a change to the stipulation in the verification for **LAND-2** that the Energy Commission receive the \$250,000 endowment. In addition to the \$250,000 endowment, the verification for **LAND-2** section (3) requires that within 30 days of the final meeting to discuss either the results of the environmental assessment or to choose an alternative coastal access program to receive the \$250,000 endowment, the project owner pay interest on the endowment at the rate of 8 percent per annum starting at the time of project construction. Energy Commission staff and Mark Silberstein acknowledge that former project owner Duke Energy was not responsible for the delays in achieving timely compliance with sections (1), (2), and (3) of **LAND-2**. Therefore, all parties agree that Dynegy should not be required to pay interest on \$250,000 for the time elapsed since project construction began. However, in keeping with the intent of **LAND-2**, Energy Commission staff is requesting that Dynegy pay 8 percent interest for eleven months on the \$250,000 endowment, which is the approximate amount of time that interest would have accrued if compliance with **LAND-2** had been achieved within the time frames described in the verification section of the condition. Eight percent simple interest on \$250,000 for eleven months totals \$18,333. Dynegy, has agreed to provide to the Foundation \$250,000 in endowment funds and \$18,333 interest for a total of \$268,333.

All parties have agreed that Dynegy will provide, prior to December 31, 2007, a certified check in the amount of \$268,333 to the Foundation. The Foundation will hold these funds in a money market or other secure liquid asset fund, pending completion of a Memorandum of Understanding (MOU) between the Coastal Commission, the Energy Commission, and the Foundation that explicitly describes the long-term use of the revenue the funds will generate.

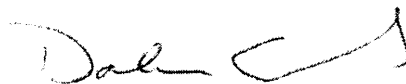
The Elkhorn Slough Foundation understands, and agrees, that if for any reason a mutually agreeable Memorandum Of Understanding (MOU) cannot be negotiated between the Coastal Commission, the Energy Commission, and the Elkhorn Slough Foundation, the Foundation will transfer the entire \$268,333 fund and any interest it may have generated, at the direction of the Compliance Project Manager, to either the Energy Commission or an agreed-upon designee.

This letter is notification to you of the Energy Commission staff's approval of the change to the verification for condition **LAND-2** that the transfer of funds under this condition be to the Elkhorn Slough Foundation. Once the transfer of the \$268,333 to the Foundation is made, Dynegy Moss Landing, LLC's obligations under condition of certification **LAND-2** for the Dynegy Moss Landing Power Plant will be completely satisfied.

Mr. Lee Genz
December 18, 2007
Page 3

Thank you for your patience over the years in dealing with this condition of certification. Should you have any questions or concerns regarding this directive, please contact Donna Stone of my staff at (916) 654-4745 or email her at dstone@energy.state.ca.us.

Sincerely,



Dale Edwards
Compliance Program Manager
Energy Facilities Siting Division

cc: Mark Silberstein, Elkhorn Slough Foundation
Peter M. Douglas, California Coastal Commission

Enclosure

**CONDITION OF CERTIFICATION LAND-2
MOSS LANDING POWER PLANT
WITH ENERGY COMMISSION STAFF APPROVED CHANGES
TO THE VERIFICATION INDICATED
December 18, 2007**

(Changes indicated by strikeout of deleted text and bold for new text)

LAND-2 To help promote coastal access adjacent to the project site and to satisfy Public Resources Code Section 25529, the project owner shall:

- (1) Provide sixty thousand dollars (\$60,000) to carry out an environmental assessment of a proposed Elkhorn Slough Circle Trail, including water-based recreation conditions, specifically to determine how current and future visitation to the area can be accommodated without compromising resource and species protection objectives for the Slough, as identified in Chapter 3 of the Coastal Act, the Local Coastal program, the Endangered Species Act and any other appropriate laws, ordinances, regulations and standards. The project owner, the Elkhorn Slough Foundation, the California Coastal Commission, and the CPM shall mutually agree on the final scope and principal investigator for this evaluation. In the event that the parties cannot mutually agree on the scope of work or its principal investigator (6/15/00 RT 68), the CPM, in consultation with the Executive Director of the Coastal Commission, shall make the final determination. In the event that funds are remaining from this project, they shall be assigned to an entity agreed upon by the CPM and the Executive Director of the Coastal Commission for the express purpose of enhancing access opportunities in and around the Elkhorn Slough.
- (2) If the environmental assessment concludes that additional visitors can be accommodated by means of the proposed Elkhorn Slough Circle Trail, or portions thereof, the project owner shall provide an endowment of two hundred and fifty thousand dollars (\$250,000), the proceeds of which will fund the equivalent of one seasonal aide position (12 hours per week on an annual average basis) for observation and maintenance activities along the Elkhorn Slough Circle Trail. At least once a year, the project owner shall meet with the CPM and representatives of the Elkhorn Slough Foundation and the California Coastal Commission staff to confer about the implementation of this resource protection/coastal access program and to determine if the funds generated by the \$250,000 endowment are sufficient to carry out the agreed-upon hours of service. If the parties mutually agree that the funds generated are not sufficient to pay for the agreed-upon hours of service, the project owner shall contribute sufficient funds to cover the anticipated shortfall for the year. In the event that the parties cannot mutually agree on the provision of service, the CPM, in consultation with the Executive Director of the Coastal Commission, shall make the final determination.

- (3) If the environmental assessment concludes that current levels of visitors, or additional visitors cannot be accommodated without compromising adopted resource and species protection objectives for the Slough, the project owner shall meet with the CPM and representatives of the Elkhorn Slough Foundation and the California Coastal Commission to determine a mutually agreeable, alternative coastal access program(s) to receive the \$250,000 endowment. In the event that the parties cannot mutually agree on alternatives, the CPM, in consultation with the Executive Director of the Coastal Commission, shall make the final determination.

Verification: Within sixty (60) days after the start of construction of the project, the project owner shall: 1) meet with the CPM and representatives of the Elkhorn Slough Foundation and the California Coastal Commission for the purpose of agreeing on the final scope and principal investigator for the environmental assessment, and 2) shall deliver a check to the California Energy Commission in the amount of \$60,000 for the environmental assessment. The environmental assessment shall take no longer than six (6) months to complete.

Within sixty (60) days of completion of the environmental assessment, the project owner shall meet with the CPM and representatives of the Elkhorn Slough Foundation and the California Coastal Commission for the purpose of discussing the results of the assessment, and if necessary selecting an alternative coastal access program(s) to receive the \$250,000 endowment.

Within thirty (30) days of the final meeting to discuss either the results of the environmental assessment or to choose an alternative coastal access program to receive the \$250,000 endowment, as well as interest at the rate of 8 percent accrued on the endowment for a period of eleven months since the start of project construction, **the project owner shall transfer the \$250,000.00 endowment plus \$18,333.00 in interest, to the Elkhorn Slough Foundation by December 31, 2007.** ~~California Energy Commission. The Energy Commission will transfer the \$250,000 endowment along with any interest accrued, to the appropriate entity that will carry out the purpose of these funds.~~