

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

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February 15, 2012

George Piantka, PE
Director, Environmental Business
NRG Energy, West
5790 Fleet Street, Suite 200
Carlsbad, CA 92008

**SUBJECT: EL SEGUNDO POWER REDEVELOPMENT PROJECT (00-AFC-14C)
COMPLIANCE CONDITION OF CERTIFICATION CUL-7**

Dear Mr. Piantka:

This letter is to inform you that the California Energy Commission (Energy Commission) is in receipt of information that the El Segundo Power Redevelopment Project (ESPR) is out of compliance with Condition of Certification CUL-7 in the Cultural Resources section of the Energy Commission Decision.

BACKGROUND

A review of the July 2011 Monthly Compliance Report (MCR) submitted to the Compliance Project Manager (CPM) on August 11, 2011, indicated that a number of artifacts were discovered during ground disturbing activities associated with facility construction. Staff has no record that construction was halted or redirected, or that the Cultural Resource Specialist (CRS) notified the CPM of this discovery within 24 hours of the find(s), as required by Condition of Certification CUL-7. In addition, it appears the CRS did not research or record the finds, and neither the CRS, nor the project owner, conferred with the CPM or staff regarding the determination of significance or the need for mitigation. This is the second instance of the project owner's failure to comply with the reporting requirements of Condition of Certification CUL-7.

The first instance from the February 2011 MCR (not submitted to the CPM until April 21, 2011), the discovery of another artifact was briefly mentioned and determined "not considered a significant find." However, as noted in the May 20, 2011, memo to the CPM, which was forwarded immediately by email to the project owner, only the lead agency (in this case, the Energy Commission) can draw conclusions regarding the significance of a find under provisions of the California Environmental Quality Act (CEQA). As with the current find(s), staff has no record that construction was halted or redirected and the CRS did not:

- notify the CPM of this discovery within 24 hours of the find;
- research or record the find; and
- confer with the CPM or staff regarding the determination of significance or the need for mitigation prior to allowing work to continue in the vicinity of the find.

CONDITION OF CERTIFICATION COMPLIANCE

Per Public Resources Code (PRC), Section 25532, the Energy Commission shall assure that any facility certified under this division is operating in compliance with conditions adopted or established by the Energy Commission, or specified in the written decision on the application. In addition, California Code of Regulations, Title 20, Section 1770 states that the Energy Commission shall provide adequate monitoring of all conditions and measures set forth in the final decision required to mitigate potential impacts and to assure that the facility is operated in compliance with all applicable laws.

The ESPR was approved by the Energy Commission in February 2005. Condition of Certification CUL-7 states:

“The CRS, alternate CRS, and the CRMs (Cultural Resources Monitors) shall have the authority to halt construction if previously unknown cultural resource sites or materials are encountered, or if known resources may be impacted in a previously unanticipated manner. Redirection of ground disturbance shall be accomplished under the direction of the construction supervisor. If such resources are found or impacts can be anticipated, the halting or redirection of construction shall remain in effect until all of the following have occurred:

1. The CRS has notified the project owner and the CPM has been notified within 24 hours of the find description and the work stoppage;
2. The CRS, the project owner, and the CPM have conferred and determined what, if any, data recovery or other mitigation is needed;
3. Any necessary data recovery and mitigation has been completed.”

Energy Commission staff will continue to work closely with El Segundo Power II LLC, to ensure conformance with all conditions of certification. However, El Segundo Power II LLC should understand that this violation may result in formal Energy Commission actions, including the assessment of penalties in accordance with the provisions of PRC Section 25534. Should Energy Commission staff file a complaint, you will be notified pursuant to the provisions of Section 1232, Title 20, California Code of Regulations (20 CCR) and have an opportunity to respond pursuant to the provisions of 20 CCR Sections 1233 and/or 1237.

If you have any questions, please call me at (916) 651-0587 or e-mail me at cmarxen@energy.state.ca.us.

Sincerely,

CHRISTOPHER J. MARXEN
Compliance Office Manager
Siting, Transmission, and
Environmental Protection Division

cc: Docket Unit, California Energy Commission
Eric Knight, Manager – Environmental Office