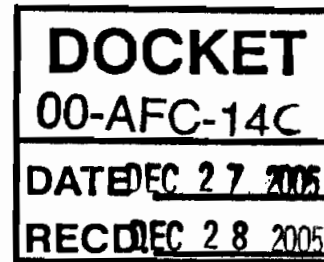


## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

December 27, 2005

Mr. Jesus Arredondo  
NRG Energy, Inc./El Segundo Power II, LLC  
3741 Gresham Lane  
Sacramento, CA 95835

**Subject: El Segundo Power Redevelopment Project (00-AFC-14C)  
Staff's Intention to File a Complaint Alleging Non-Compliance  
With Condition of Certification BIO-1**

Dear Mr. Arredondo:

El Segundo Power II, LLC (ESP II) filed an Application for Certification (AFC) with the California Energy Commission on December 21, 2000, and the Energy Commission issued a Decision approving the construction and operation of the El Segundo Power Redevelopment Project on February 2, 2005.

Among the conditions of certification applicable to the project is condition BIO-1, which requires that the project owner, ESP II:

"place \$5,000,000 in trust for the Santa Monica Bay Restoration Commission (SMBRC) to assess the ecological condition of the Santa Monica Bay and to develop and implement actions to improve the ecological health of the Bay. At least \$250,000 shall be provided within 30 days after this Decision becomes final, and an additional sum of at least \$250,000 shall be provided every 90 days thereafter until \$1 million has been provided. At that time, the SMBRC in consultation with the project owner, shall propose a schedule for the payment of the remaining funds . . ."

Due to litigation challenging the Energy Commission Decision, the Decision did not become final until August 31, 2005, when the California Supreme Court dismissed a Writ Petition. ESP II was notified that the first \$250,000 payment required by Condition of Certification BIO-1 was therefore due on September 30, 2005. No payment was made by that date. Instead, on September 30th, ESP II filed a petition seeking to amend the condition to require the first payment be made at least 90 days prior to the start of construction of the new generating units. That petition was denied by the Energy Commission on November 3, 2005. The Energy Commission's order denying the petition directed "that payments commence within 30 days," making the first payment due on December 5, 2005. Subsequent payments are due on March 3, 2006, June 1, 2006, and August 30, 2006.

ESP II failed to make its initial payment by the extended December 5, 2005 deadline. During a conference call convened by Energy Commission staff on December 5th to discuss compliance with the requirement, ESP II representatives refused a proposal that it deposit the initial payment with the SMBRC with the understanding that the monies would not be spent until a Memorandum of Understanding (MOU) is approved by ESP II and the SMBRC. ESP II expressed a desire to specify in the MOU how the monies would be spent, including a limitation on the amount allocated to overhead and administrative costs. We believe that condition BIO-1 is sufficiently specific regarding how the monies are to be used, and we do not believe it is necessary or appropriate for ESP II to be involved in decisions regarding how the monies will be spent. We therefore will not find a payment conditioned upon approval of a MOU as satisfying the condition; only an unconditional payment will suffice.

We are taking this opportunity to inform ESP II that if proof of the first payment is not provided by close of business on January 3, 2006, we will file a complaint with the Energy Commission to be heard at the January 18, 2006 Business Meeting. In the complaint, we will be requesting a fine of \$25,000, plus \$1,000 for every day payment is delayed, up to a maximum of an additional \$50,000, beyond January 3, 2006. This would result in a total fine of \$75,000 if no payment were made by February 22<sup>nd</sup>. If, however, ESP II pays the \$250,000 at or before the January 18, 2006 Business Meeting, staff will recommend that no civil penalties be imposed by the Energy Commission. If the first payment and any civil penalties that are assessed remain unpaid after February 22, 2006, staff intends to recommend additional penalties, as appropriate, in a second complaint that we will request be heard at a subsequent business meeting.

If you have any questions or comments, please contact Marc Pryor, Compliance Project Manager, either by telephone at (916) 653-0159, or by e-mail at [mpryor@energy.state.ca.us](mailto:mpryor@energy.state.ca.us).

Sincerely,



TERRENCE O'BRIEN, Deputy Director  
Systems Assessment & Facilities Siting

cc: John McKenzie, Counsel to El Segundo Power II, LLC  
David Lloyd, Secretary, El Segundo Power II, LLC  
Scott Valor, Santa Monica Bay Restoration Commission