CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 14
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

January 4, 2006

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

David Lloyd, Secretary
El Segundo Power II LLC
4600 Carlsbad Blvd.
Carlsbad, CA 92008

John A. McKinsey, Esq. (Legal Counsel)
770 L St., Ste. 800
Sacramento, CA 95814

Re: Energy Commission Staff Complaint for Compliance Violation; Notification of Hearing

Gentlemen:

Enclosed is a copy of STAFF'S COMPLAINT FOR COMPLIANCE VIOLATIONS AND REQUEST FOR ADMINISTRATIVE CIVIL PENALTY with attachments. This complaint will be filed today and a hearing will be held before the full Energy Commission during its January 18, 2006, Business Meeting. That meeting begins at 10:00 a.m. and will be conducted at 1516 Ninth Street, Sacramento, CA. The meeting agenda will be posted on the internet (http://www.energy.ca.gov/business_ meetings/index.html) prior to the meeting.

Compliance Project Manager Marc Pryor will be out of town on January 18. We intend to rely on his sworn declaration as his testimony. If you wish to cross-examine him let me know by January 13 and I will see that he is available by telephone. Chuck Najarian, Mr. Pryor's supervisor, will be present at the Business Meeting.

For your information, the Energy Commission's governing statutes and regulations are available on the Internet as follows:

> Statutes: http://www.energy.ca.gov/reports/Warren-Alquist_Act/index.html
> Regulations: http://www.calregs.com (navigate to the California Code of Regulations, Title 20, Division 2)

Sincerely,

Paul A Kramer Jr.

Paul A. Kramer Jr.
Senior Staff Counsel

Enclosures

PROOF OF SERVICE (REVISED 1-4-06) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 1-4-06
CA

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No. 00-AFC-14C
	)	
EL SEGUNDO POWER REDEVELOPMENT	)	STAFF'S COMPLAINT FOR
	)	COMPLIANCE VIOLATIONS AND
EL SEGUNDO POWER II, LLC,	)	REQUEST FOR ADMINISTRATIVE
Project Owner/Licensee	)	CIVIL PENALTY; DECLARATION
	)	OF MARC S. PRYOR
	)	
	)	Hearing Date: January 18, 2006
	)	Hearing Time: 10:00 a.m.
	)	Location: 1516 Ninth Street
	)	Sacramento, CA
	)	

The Energy Commission Staff petitions the Energy Commission for an order imposing an administrative civil penalty in the amount of $25,000 plus $1,000 for each day of noncompliance as is explained in greater detail below on El Segundo Power II, LLC ("El Segundo Power"). The grounds and reasons for imposing the penalty are described below. This complaint is intended to serve as the staff report described in Title 20, California Code of Regulations, Section 1237.

The addresses of record for El Segundo Power II, LLC are:

Mr. Jesus Arredondo
NRG Energy, Inc./El Segundo Power II, LLC
3741 Gresham Lane
Sacramento, CA 95835
(916) 928-0796

David Lloyd, Secretary
El Segundo Power II LLC
4600 Carlsbad Blvd.
Carlsbad, CA 92008
(760) 268-4069

John A. McKinsey, Esq. (Legal Counsel)
770 L St., Ste. 800
Sacramento, CA 95814
(916) 447-0700

I.
COMMISSION AUTHORITY

Public Resources Code Section 25534 describes the circumstances under which the Energy Commission may revoke a power plant's license or impose a civil penalty.

> (a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:
> . . .
> (2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.
> . . .
> (b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25534.1 and may not exceed seventy-five thousand dollars ($75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars ($1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars ($50,000).

II.
THE LICENSE

The Energy Commission's license to construct and operate the El Segundo Redevelopment power plant was approved in a Commission Decision dated February 2, 2005. At all times since the Commission Decision, El Segundo Power has been the owner of the license.

III.
CONDITION OF CERTIFICATION

Among the conditions of certification applicable to the license is condition BIO-1:

> BIO-1: The project owner shall 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; within 30 days after submittal of the proposed schedule to the CPM, the CPM shall approve a schedule, which may be the SMBRC's schedule or a modification thereof. The project owner shall comply with the approved schedule. The funds shall be spent as directed by the SMBRC, after consultation with the CPM and the Los Angeles Regional Water Quality Control Board, for the purposes of assessing the ecological condition of the Santa Monica Bay and developing and implementing actions to improve the ecological health of the Bay. To the maximum extent feasible in keeping with those purposes, the studies conducted shall be designed to assist the LARWQCB in carrying out its responsibilities under section 316(b) of the Clean Water Act, for this project and other activities affecting Santa Monica Bay. If any funds remain unspent upon beginning of commercial operation, the project owner may petition the Energy Commission for return of those unspent funds to the project owner.

Verification: The project owner shall submit to the CPM a copy of the receipt transferring funds as required by this Condition. The project owner shall provide to the CPM a copy of any studies carried out under this Condition.

Due to litigation challenging the Commission Decision, it did not become final until August 31, 2005, when the California Supreme Court dismissed a Writ Petition. The first $250,000 payment required by condition BIO-1 was therefore due on September 30, 2005. No payment was made by that date. Instead, on September 30th, El Segundo Power 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.[1] That petition was denied by the Energy Commission on November 3, 2005. The Commission's order denying the petition directed "that payments commence within 30 days," making the first payment due on December 5, 2005.[2] Subsequent payments are due on March 3, 2006, June 1, 2006, and August 30, 2006.

[1] At this time, no date for the start of construction has been identified.

[2] The actual due date, December 3, was a Saturday. Following the normal custom when a deadline falls on a weekend or holiday, staff understands it is extended to the following Monday, December 5. (Cal. Code Regs., tit 20, § 1003; Code of Civ. Proc.§§ 10, 12, 135.)

IV.
THE VIOLATIONS

El Segundo Power failed to make its initial $250,000 payment by the extended December 5, 2005 deadline. It refused a proposal that it deposit the initial payment with the SMBRC under a stipulation that the monies would not be spent until a memorandum of understanding is approved by El Segundo and the SMBRC.[3] See the attached Declaration of Marc S. Pryor. It has further failed to comply with staff's request that it make the payment by January 3, 2006. See the attached Declaration of Marc S. Pryor and December 27, 2005 letter from Terrence O'Brien to Jesus Arredondo. Those failures constitute significant violations of condition BIO-1 and subject El Segundo Power to sanction under Public Resources Code §25534(a)(2) and (b), supra.

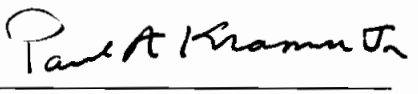
V.
RELIEF REQUESTED

The only justification that El Segundo Power offered for its failing to meet the original deadline in condition BIO-1 was its unwillingness to invest additional money in a project that it is unsure it will be able to complete. That justification was rejected by the Energy Commission in both the original AFC proceeding and again on denial of its petition to postpone the payments. Its failure to satisfy the condition at this point following the Energy Commission's clear direction that it do so, is a gross, substantial violation of a condition of certification. The appropriate remedy for that violation is a civil penalty of $25,000 (ten percent of the delinquent amount) plus $1,000 for each day that the violation continues past January 3, 2006. For example, if the violation remains uncorrected by the January 18, 2006 Business Meeting when this Complaint will likely be heard by the Energy Commission, the total penalty would be $25,000 plus $1,000 times 14 days (January 4 through January 17) or a total of $39,000. If the violation continues past the Commission's decision on this Complaint, penalties should continue to accrue at the rate of $1,000 per day until February 23, 2006, when the $50,000 total limit on daily penalties will be reached. Should this occur staff anticipates filing an additional complaint requesting additional penalties.

[3] El Segundo Power has 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. Staff believes that condition BIO-1 is sufficiently specific regarding how the monies are to be used and does not believe it is necessary or appropriate for El Segundo Power to be involved in decisions regarding how the monies will be spent. In order to comply with the condition, the payment must be unconditional.

DATED: January 4, 2006

Respectfully submitted,



PAUL A. KRAMER JR
Senior Staff Counsel
California Energy Commission
1516 9th Street, MS 14
Sacramento, CA 95814
(916) 654-5103
(916) 654-3843 (Fax)
pkramer@energy.state.ca.us

DECLARATION OF MARC S. PRYOR

I, Marc S. Pryor, declare:

1. I am employed by the State of California Energy Resources Conservation and Development Commission as a Planner II. One of my duties is to serve as the Compliance Project Manager (CPM) for the El Segundo Power Redevelopment project (00-AFC-14C). As CPM for that project, I monitor the project's compliance with the Conditions of Certification applied to it in the Commission Decision.

2. I have received no evidence that the requirement of condition BIO-1 that an initial $250,000 be placed in trust by the project's owner was satisfied by December 5, 2005 as the Energy Commission directed in its November 3, 2005 decision denying the project owner's petition to amend that condition. Further, the payment requirement remains unsatisfied on January 4, 2006 as I sign this declaration.

3. Following the November 3 decision, I made various efforts to facilitate and encourage compliance with condition BIO-1 including voice mail messages and telephone conversations with El Segundo Power's counsel, John A. McKinsey; email and telephone conversations with Shelley Luce and Scott Valor of the Santa Monica Bay Restoration Commission (SMBRC) and telephone conversations with David Lloyd, recently identified to me as El Segundo Power's lead representative regarding the terms of the trust.

4. Those efforts culminated in a telephone conference call conducted at my request on December 5, 2005. Participants in that call included myself, my supervisor, Chuck Najarian, our counsel, Paul Kramer, as well as Scott Valor, John McKinsey, David Lloyd and others. During that call:

A. Mr. Lloyd insisted that a memorandum of understanding between El Segundo Power and the SMBRC must be approved by the SMBRC before the initial $250,000 payment required by condition BIO-1 could be made. He had not yet drafted an MOU and indicated that previous time commitments made it unlikely that he could finish a final version in time for its adoption at the SMBRC's December 15, 2005 meeting. He intended to discuss his concerns about how the moneys could be spent, including limits on overhead costs, in the MOU.

B. Mr. Valor indicated that the next SMBRC meeting will not occur until

February 16, 2006. To avoid further delay in the making of the initial payment, Mr. Valor volunteered to recommend that the SMBRC adopt a resolution at its December meeting that it accept the initial payment but hold the funds until an MOU is approved. Mr. Lloyd rejected Mr. Valor's offer, however, citing concerns about whether the money could be refunded to El Segundo Power should a MOU not be agreed upon and his general position that no monies be transferred until an MOU is approved.

C. Mr. Valor also indicated that the SMBRC could not begin to plan the studies contemplated in condition BIO-1 until the initial payment was received. Without the assurance of funding that the initial payment provides, it is unable to discuss work plans or scheduling with potential subcontractors. Waiting until the February meeting to approve a MOU and receive payment would delay the commencement of planning the studies as well as the studies themselves.

5. In addition to my efforts, on December 27, 2005, Terrence O'Brien sent a letter to Mr. Jesus Arredondo of El Segundo Power requesting payment by close of business on January 3, 2006.

6. On January 3, 2006, I spoke to John McKinsey, counsel for El Segundo Power. Mr. McKinsey informed me that El Segundo Power intended to make the initial payment but continued to have questions about the "trust" mentioned in condition BIO-1, such as the identity of the trustee, limitations on overhead expenses and oversight over expenditures.

I declare under penalty of perjury under the laws of the State of California, that the above statements are true and correct to the best of my knowledge.

Dated: January 4, 2006

Marc S. Pryor

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 22nd. 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.

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

STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

In the Matter of:)	
)	**Docket No. 00-AFC-14**
Application for Certification)	
of the El Segundo Power Plant)	**PROOF OF SERVICE LIST**
Redevelopment Project)	***[*Revised 1/4/06]***
)	

I, **CHESTER HONG**, declare that on **January 4, 2006**, I deposited copies of the attached **STAFF'S COMPLAINT FOR COMPLIANCE VIOLATIONS AND REQUEST FOR ADMINISTRATIVE CIVIL PENALTY; DECLARATION OF MARC S. PRYOR ; *AND* LETTER DATED DECEMBER 27, 2005, FROM TERRENCE O'BRIEN OF THE CALIFORNIA ENERGY COMMISSION *TO* MR. JESUS ARREDONDO OF EL SEGUNDO POWER** in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

DOCKET UNIT

Send the original signed document plus the required 12 copies to the address below:
CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
Attn: Docket No. 00-AFC-14
1516 Ninth Street
Sacramento, CA 95814-5512

APPLICANT

Jesus Arredondo
NRG Energy, Inc./
El Segundo Power II, LLC
3741 Gresham Lane
Sacramento, CA 95835
By Fax and Mail

David Lloyd
Secretary
El Segundo Power II, LLC
4600 Carlsbad Blvd.
Carlsbad, CA 92008
By Fax and Mail

COUNSEL FOR APPLICANT

John McKinsey
Stoel Rives, LLP
770 L Street, Suite 800
Sacramento, CA 95814
Jamckinsey@stoel.com
Fax and Mail

INTERESTED AGENCIES

California Independent System Operator
Attn: Johan Galleberg
151 Blue Ravine Road
Folsom, CA 95630
jgalleberg@caiso.com

Marc D. Joseph
Adams, Broadwell, Joseph & Cardoza
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
mdjoseph@adamsbroadwell.com

John Theodore Yee, P.E.
South Coast Air Quality Mgmt. District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182
Jyee@agmd.gov

City of El Segundo
Paul Garry (Planning)
350 Main Street
El Segundo, CA 90245
Pgarry@elsegundo.org

California State Lands Commission
Attn: Jane Smith
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825
smithj@slc.ca.gov

California Coastal Commission
Attn: Tom Luster
Energy/Ocean Resources
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Tluster@coastal.ca.gov

California Dept. of Fish & Game
Attn: Bill Paznokas
4949 Viewridge Avenue
San Diego, CA 92123
wpaznokas@dfg.ca.gov

National Marine Fisheries Service
Attn: Bryant Chesney
501 West Ocean Blvd., Suite 4200
Long Beach, CA 90802
Bryant.chesney@noaa.gov

California State Lands Commission
Attn: Dwight Sanders
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825

Scott Valor
Director of Government Affairs
Santa Monica Bay Restoration
Commission
310 W. 4th
Los Angeles, CA 90013
svalor@waterboards.ca.gov

INTERVENORS

William C. Reid
Utility Workers Union of America
Local 246
10355 Los Alamitos Blvd.
Los Alamitos, CA 90720
Wmreid@earthlink.net

Mark D. Hensley
City Attorney, City of El Segundo
350 Main Street
El Segundo, CA 90245
Mhensley@bwslaw.com

Dana Palmer
Santa Monica Baykeeper
P.O. Box 10096
Marina del Rey, CA 90295
dpalmer@smbaykeeper.org

Michelle A. Murphy
Robert E. Perkins
4420 The Strand
Manhattan Beach, CA 90266
Murphyperkins@cs.com

City of Manhattan Beach
Community Development Dept.
Laurie Jester
1400 Highland Avenue
Manhattan Beach, CA 90266
Ljester@ci.manhattan-beach.ca.us

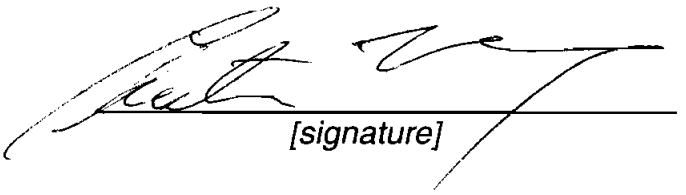
Robert Wadden
City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266
Rwadden@ci.manhattan-beach.ca.us

Lyle & Elsie Cripe
4421 Ocean Drive
Manhattan Beach, CA 90266
Cripe668@earthlink.net

Richard G. Nickelson
4421 Crest Drive
Manhattan Beach, CA 90266
nickmf@adelphia.net
Santa Monica Baykeeper
Attn: Tracy J. Egoscue
P.O. Box 10096
Marina del Ray, CA 90295
baykeeper@smbaykeeper.org

Heal the Bay
Attn: Dr. Mark Gold
3220 Nebraska Avenue
Santa Monica, CA 90404
Mgold@healthebay.org

I declare under penalty of perjury that the foregoing is true and correct.


[signature]

* * * *

INTERNAL DISTRIBUTION LIST

FOR YOUR INFORMATION ONLY! Parties **DO NOT** mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:

James Reede
Project Manager
MS-15

Marc S. Pryor
Compliance Project Manager

Paul Kramer
Senior Staff Counsel
MS-14

PUBLIC ADVISER

Margret J. Kim
Public Adviser's Office
1516 Ninth Street, MS-12
Sacramento, CA 95814
pao@energy.state.ca.us