

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

DOCKET 00-AFC-14C
DATE OCT 17 2005
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DATE: October 17, 2005

TO: Interested Parties

FROM: Marc Pryor, Compliance Project Manager (CPM)

A handwritten signature in black ink, appearing to be "E. J. ...", written over the "FROM" field.

SUBJECT: EL SEGUNDO POWER REDEVELOPMENT PROJECT (00-AFC-14C)

- **NOTICE OF RECEIPT OF PETITION TO AMEND CONDITION OF CERTIFICATION BIO-1; AND**
- **PUBLIC REVIEW OF STAFF ANALYSIS**

On September 30, 2005, the California Energy Commission received a petition from El Segundo Power II, LLC (ESP) to amend a condition of the Energy Commission's license for the El Segundo Power Redevelopment Project.

The 630-megawatt natural gas-fired project is to be located near the City of El Segundo in the County of Los Angeles and will replace two of the retired power plant units at the El Segundo Generating Station. The project was originally certified by the Energy Commission at a special Business Meeting on December 23, 2004, but a second Business Meeting to consider errata was held on February 2, 2005. The decision, with errata, was certified on February 2, 2005. A petition challenging the certification was filed with the California Supreme Court shortly thereafter, thus delaying the effective date of the decision. With the Court's denial of the petition on August 31, 2005, the decision became final.

Condition of Certification BIO-1 requires the project owner to place \$5 million into trust for use by the Santa Monica Bay Restoration Commission (SMBRC) to assess the ecological condition of the Bay and to develop and implement actions to improve the ecological health of the Bay. The condition provides a payment schedule for the first \$1 million, starting with the first \$250,000 payment due 30 days after the decision becomes final and requiring additional sums of at least \$250,000 every 90 days thereafter until \$1 million is paid. The remainder of the \$5 million would be provided in accordance with a schedule to be proposed by SMBRC, in consultation with the project owner, subject to modification and approval by the Energy Commission's compliance project manager (CPM).

On September 14, 2005, Energy Commission staff informed the project owner by letter that the 30-day period preceding the first payment started on August 31, 2005; staff included a payment schedule in the letter for the first \$1 million, with the first payment due on September 30, 2005.

DESCRIPTION OF PROPOSED MODIFICATION

The petitioner requests approval to link the start of payments required in Condition of Certification BIO-1 to commencement of construction of the new generating units instead of linking them to the Commission's final decision date.

The petitioner stated that to date, ESP has been unable to negotiate a power purchase agreement with any load serving entity, nor has any such entity issued a formal request for offers for energy and capacity from the project. The petitioner also stated that Southern California Edison recently pulled its Request for Offers (RFO) for new peaking generation because of concerns about how costs for new generation would be treated under a CPUC decision that may allow large customers or blocks of aggregated customers to leave the utility.

The petitioner believes the proposed modification to the project is necessary because ESP has been unable to finance the project, including the \$5 million for the payments required in Condition of Certification BIO-1, in the absence of a viable energy and capacity market or a power purchase agreement. Further, the petitioner believes that the project will have to endure this significant cost without a reasonable assurance of the financial viability of the project if the proposed modification to the project is not approved.

The petitioner believes that if the project is not modified as proposed, ESP will be unable to proceed with the project and consequently will not be able to fund the study. The petitioner believes that this would result in the loss of needed power generation for the State and the loss of a value added study and improvement plan for the Santa Monica Bay.

The petitioner believes that linking the start of payment to 90 days prior to commencement of construction of the new generating units will allow ESP to proceed with the project when it has been determined to be financially feasible, while still providing the \$5 million for the Santa Monica Bay study and improvement plan in a timely manner.

The proposed modifications would result in amending Condition of Certification BIO-1.

STAFF ANALYSIS

The Commission may approve a project modification only if it finds, among other things, that "there has been a substantial change in circumstances since the Commission certification justifying the change or that the change is based on information which was not available to the parties prior to Commission certification." [Cal. Code Regs., tit. 20, § 1769(a)(3)(D)]

The project owner contends that because it has been unable to attract a load serving entity to either: a) negotiate a power purchase agreement or b) issue a formal request for offers for energy and capacity from the project, it lacks a power purchase agreement and,

therefore, lacks the financing to comply with the schedule of payments under BIO-1. The lack of a power purchase agreement, however, is no different from the situation on February 2, 2005, when the Energy Commission certified the project, requiring the first payment to SMBRC within 30 days of the decision becoming final.

A claim of a lack of financing or a power purchase agreement does not demonstrate a change in circumstances or new information justifying the requested change to the payment schedule. Indeed, during the special Business Meeting held on December 23, 2004, the project owner's legal counsel, Mr. McKinsey, proposed changing BIO-1 to require payment "...90 days... [prior to] ...start of construction of the new generating units." (12/23/04 Special Business Meeting transcript p. 36, lines 3-5.) Mr. McKinsey also stated "...that money is not able to be paid until we actually have a contract and we have financed this process." (Ibid, p. 31, lines 19-21.)

In addition, the Commission deliberately conditioned BIO-1 payments to start 30 days after certification became final, rather than tie payments to some other milestone, such as the project owner securing a power purchase agreement, obtaining financing, starting demolition, or starting construction. During the special Business Meeting, then-Chairman Keese expressed the Committee's "...desire to see that the Restoration Commission start promptly with its study work." (Ibid, p. 29, lines 20-22.) Commissioner Boyd characterized the first \$1 million as providing "...enough seed money to get this [the study] going quickly..." (Ibid, p. 97, lines 20-21.) In addition, Commissioner Pfannenstiel stated that she "...agree[s] with Commissioner Geesman...we need to get moving on this [the study] rather than waiting until the plant is under construction." (Ibid, p. 99, lines 10-12.) Commissioner Boyd's motion, seconded by Commissioner Geesman, was that "...\$250,000 be provided within 30 days of certification, and \$250,000 be provided every three months thereafter until we have a million dollar total within a year to finance this study." (Ibid, p. 103, lines 23-25 and p. 104, line 1.) The motion was adopted five to nothing. It is clear from transcripts of the special Business Meeting that the Energy Commission's intent is that SMBRC's studies be funded in the manner and timeframe specified in the final decision.

Staff believes the study contemplated by the decision will take a significant period of time to design and implement. It is staff's position that further delay in complying with BIO-1 is counter to the expressed desires of the Energy Commission.

PETITIONER'S PROPOSED REVISIONS TO CONDITION OF CERTIFICATION

(Deleted text is in ~~strikethrough~~, new text is **bold double-underlined**):

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 **at least 90 days prior to the start of construction of the new generating units** ~~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.

RECOMMENDATIONS

It is Energy Commission staff's position that the petitioner fails to satisfy § 1769(a)(3)(D). Therefore, staff intends to recommend denial of the petition at the November 3, 2005 Business Meeting of the Energy Commission. Staff also intends to recommend that the project owner be required to initiate payments within 30 days of the Energy Commission's ruling on the petition.

PUBLIC REVIEW PROCESS

The petition, including an addendum, to modify condition of certification BIO-1 is available on the Energy Commission's webpage at <http://www.energy.ca.gov/sitingcases/elsegundo/index.html>.

If you would like to receive a hard copy of the petition, and/or the Energy Commission Order regarding the change, please complete the enclosed Information Request Form and return it to the address shown. If you have comments on this proposed modification or staff's analysis, please submit them to Marc Pryor, Compliance Project Manager, at the address on this letterhead, or by fax to (916) 653-0159, or by e-mail at mpryor@energy.state.ca.us no later than 5:00 p.m., November 1, 2005. This notice including staff's analysis and the Energy Commission Order will also be posted on the webpage.

For further information on how to participate in this proceeding, please contact Margret J. Kim, the Energy Commission's Public Adviser, at (916) 654-4489, or toll free in California at (800) 822-6228, or by e-mail at pao@energy.state.ca.us. If you require

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special accommodations, please contact Lourdes Quiroz at (916) 654-5146. News media inquiries should be directed to Assistant Director, Claudia Chandler, at (916) 654-4989, or by e-mail at mediaoffice@energy.state.ca.us.

Enclosure: Information Request Form

Mail List # 7046

Privacy Policy: You will receive only the information requested, and the Energy Commission will make no additional use of your personal information and it will not be provided to any other entity.

INFORMATION REQUEST FORM

COMPLETE & MAIL TO:

CALIFORNIA ENERGY COMMISSION
COMPLIANCE UNIT
ATTN: MARC PRYOR
1516 NINTH STREET, MS-2000
SACRAMENTO, CA 95814

OR FAX TO:

(916) 654-3882

NAME AND/OR TITLE (AS IT IS TO APPEAR ON MAIL LABEL)

ORGANIZATION (IF APPLICABLE)

STREET ADDRESS OR P.O. BOX

CITY STATE ZIP CODE

PROPOSED AMENDMENT TO THE COMMISSION DECISION FOR THE EL SEGUNDO POWER REDEVELOPMENT PROJECT TO MODIFY CONDITION OF CERTIFICATION BIO-1 AND AMEND THE ENERGY COMMISSION DECISION

PLEASE CIRCLE THE DOCUMENTS YOU WOULD LIKE TO RECEIVE:

- PETITION TO AMEND
- ENERGY COMMISSION ORDER

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MAIL LIST NO: 7046