

**CALIFORNIA ENERGY COMMISSION**

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



October 6, 2011

**DOCKET**

**99-AFC-1C**

DATE OCT 06 2011

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Mr. Robert Hoffman  
 Director, Business Development  
 Occidental Energy Ventures Corporation  
 111 W. Ocean Blvd, Suite 800  
 Long Beach, CA 90801-2900

**SUBJECT: ELK HILLS POWER PROJECT, 99-AFC-1C  
 COMPLIANCE CONDITION OF CERTIFICATION SOIL&WATER-4**

Dear Mr. Hoffman:

This letter is to inform you that the California Energy Commission (Energy Commission) is in receipt of information that the Elk Hills Power Project (EHPP) is currently out of compliance with Condition of Certification **SOIL&WATER-4**, and has been out of compliance with this Condition since 2007.

#### **BACKGROUND**

Per the 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, the 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.

#### **CONDITION OF CERTIFICATION COMPLIANCE**

The EHPP project was approved by the Energy Commission in April, 2003. In the Energy Commission's Final Decision (Decision), Condition of Certification **SOIL&WATER-4** states that the project shall employ water conservation measures to limit water use to a maximum of 3,000 acre-feet per year (afy). The documented annual water use has exceeded the maximum limit allowed each year since 2007. Over the last four years, the annual water use was documented in annual reports from EHPP to the California Energy Commission at 3,358 afy, 3,520 afy, 3,215 afy, and 3,300 afy, respectively. Additionally, EHPP used 3,157 afy in 2004 in violation of the condition.

The Energy Commission received a letter from Jane Luckhardt, Downey Brand Attorneys, LLP, dated September 12, 2011, regarding water use at the EHPP. The letter notes the history of the project's water use, the increase in Total Dissolved Solids (TDS) in the project's supply water, and other factors controlling water use at the project. This letter

concluded that with the completion of the Cogeneration project<sup>1</sup>, Elk Hills Power, LLC (EHP) expects water use to be no more than 3,000 afy.

In order to attain compliance with the Condition of Certification **SOIL&WATER-4**, EHP must use no more than the allowed 3,000 afy of water. While it has been explained that the switch to a cogeneration project will decrease the water use at the EHPP, the Energy Commission must ensure that the project will adhere to its allowable water use per Condition of Certification **SOIL&WATER-4**. Due to the project's historical and current failure to comply with the limitations as set forth in this Condition, EHPP should submit quarterly water use reports for review in order to determine if the project is remaining within the annual water use limit.

Staff also strongly recommends that you file an amendment pursuant to California Code of Regulations Section 1769(a) to change the annual water use limit if it appears that the EHPP cannot comply with this condition of certification. A Petition to Amend would allow the Commission to conduct the requisite analysis for such a proposal to identify any potential adverse environmental impacts associated with an increase in water use, and to ensure that any such impacts are appropriately mitigated.

The Energy Commission staff will continue to work closely with EHP to ensure conformance with all conditions of certification. However, EHP should understand that any use of water resources in excess of the amount as set forth in Condition of Certification **SOIL&WATER-4** will be considered a violation of that condition. The violation may result in formal Energy Commission actions including the assessment of penalties in accordance with the provisions of PRC Section 25534. In addition, the staff is currently considering whether to recommend to the commission that penalties, in accordance with PRC Section 25534 be imposed for the past failure to comply with the Condition of Certification **SOIL&WATER-4**. Should 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 Sections 1233 and/or 1237, 20 CCR.

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

Sincerely,



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

cc: Jane Luckhardt, Downey Brand Attorneys, LLP  
Docket Unit, California Energy Commission

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<sup>1</sup> Elk Hills Power, LLC filed a Request for Administrative Change to Allow Operation as a Cogeneration Facility on July 1, 2011. The request was approved as a Staff Approved Project Modification on August 19, 2011.