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CALIFORNIA ENERGY COMMISSION

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



January 13, 2015

George L. Piantka, P.E.
Director, Environmental Business
NRG Energy, Inc.
5790 Fleet Street, Ste. 200
Carlsbad, CA. 92008-4703

RE: El Segundo Power Facility Modification (ESPFM): Staff Responses to Project Owner's FSA Part A Comments

Mr. Piantka,

As discussed during the December 17, 2014, ESPFM Committee Status Conference, NRG Energy Inc. provided comments to FSA Part A on December 8, 2014 with concerns and recommended edits to several technical areas. Significant portions of these comments focused on the Biological and Cultural Resource Conditions of Certification, with additional comments on the Compliance Conditions, Visual and Waste Management Conditions of Certification (COCs).

As reported during the December Status Conference, staff has reviewed NRG's recommended edits for all technical areas mentioned in NRG's comments. For Compliance, Visual Resources, and Waste Management, staff reviewed and accepted NRG's comments, but will have clarifying changes to **COM-14 & 15**. In order for the parties to continue with an open dialogue on these matters of concern, Staff has developed responses to NRG's comments and recommended changes to the conditions of certification. Staff's responses identify areas of agreement, clarify staff's position for maintaining specific language at issue in a condition of certification, and also identify areas where additional information from NRG may allow for more narrowly focused conditions of certification.

ESPFM FSA Part A Biological Resources Staff Response

Staff agrees with the project owner's suggested changes to the following conditions of certification:

- Clarification to Condition of Certification **BIO-7**, Item 4 regarding which parking lots need to be inspected.
- Minor editorial changes to Condition of Certification **BIO-9**, Items 1 and 14 and the verification.

- Adding “as applicable” to Condition of Certification **BIO-9**, Items 4 and 7.
- Changes to Condition of Certification **BIO-9**, Item 15 removing the requirement to plant seacliff buckwheat and eradicate ice plant as this requirement was included in the previous amendment in relation to potential impacts from the beach delivery system. Staff continues to encourage the planting of seacliff buckwheat and removal of iceplant as required in the El Segundo Energy Center’s (ESEC) current conditions of certification (Order # 10-0630-2).
- Deletions in Condition of Certification **BIO-14** regarding including a description of the funding mechanism in the Facility Closure Plan.
- Clarifications to Condition of Certification **BIO-16**, Item 5 regarding reporting of special-status species and reporting of dead or injured wildlife during construction.

Staff’s responses to the project owner’s suggested changes to the following conditions of certification:

- Changes to Condition of Certification **BIO-7** which adds language that the Designated Biologist (DB) may direct site personnel on how to perform DB duties. This condition is strictly related to the DB’s duties. The DB may delegate duties to an approved Biological Monitor (BM) but not site personnel unless stated in a specific condition of certification. Also, staff rejects NRG’s proposed changes to the DB duties in Condition of Certification **BIO-7** Items 2 and 3 as this is standard language currently within ESEC’s conditions of certification (Order # 10-0630-2).
- Changes to Conditions of Certification **BIO-7**, **BIO-8**, **BIO-9**, and **BIO-16** related to removal of the condition of certification requirements during demolition, operation and closure activities. Issues pertaining to biological resources need to be monitored and reported if they occur during demolition and during the operational life of the project. As stated in the response to comments on the PSA, the BRMIMP also applies during operation and closure. In addition, this language, for the most part, is a current condition of certification for the ESEC (Order # 10-0630-2). A DB is not expected to be onsite regularly during operation or closure unless issues with biological resources occur. This may be facilitated by having a CPM-approved DB, per Condition of Certification **BIO-6**, on call to address biological resource issues if they arise. Staff will clarify in the verification of Condition of Certification **BIO-7** that record summaries in the Annual Compliance Reports are only required in years when issues with biological resources occur.
- Changes to Condition of Certification **BIO-8** regarding adding BMs as the responsible party above the bulleted duties list as it states later in the condition that the DB may delegate their duties to the BM. Also, changes to the verification that the BM notifies the CPM of any incidents as the DB is the main point of contact with the CPM. Please note that in order to facilitate use of BMs staff will need to add an additional condition of certification that addresses the BM

qualifications for approval. Staff will also be changing the statement in the verification of Condition of Certification **BIO-8** from “If required by the Designated Biologist and Biological Monitor(s)” to “If required by the Designated Biologist or Biological Monitor(s),” so that direction would not need to come from both parties.

- Deletion of Condition of Certification **BIO-9**, Item 11 regarding including a discussion of biological resource related facility closure measures. Staff acknowledges that the Compliance Conditions of Certification require a closure plan but the BRIMPP is a detailed biological resources specific document that implements the avoidance, monitoring and mitigation measures required to lessen the potentially significant impacts of facility construction, modification, operation and closure, within the timeframes required for such resources. These timeframes may, or may not, coincide with the closure plan requirements designated in Compliance Conditions of Certification, therefore due to these complexities staff recommends the BRIMPP continue to separately require consideration of these resources. This requirement is a current condition of certification for the ESEC (Order # 10-0630-2).
- Changes to Condition of Certification **BIO-12** specifying that the Biological Opinion only relates to the decommissioning of the once-through cooling facilities for Units 3 and 4 and related in-water forebay work. As stated in the FSA, it is unknown if the EPA will determine it necessary to consult with the USFWS for impacts from nitrogen deposition in relation to its issuance of a Prevention of Significant Deterioration (PSD) permit.
- Deletions to Condition of Certification **BIO-16** of the requirement that dead or injured wildlife be reported to the Project Environmental Compliance Monitor during operations. The Designated Biologist or Biological Monitor would not be on site during operations but should be notified of any issues with wildlife during operations so personnel need to know who to report dead or injured wildlife to. In addition, an appropriate Scientific Collecting Permit, issued by the CDFW is required for collection and handling wildlife, as required by Fish and Game code.

ESPFM FSA Part A Cultural Resources Staff Response

NRG’s comments and recommendations for Condition of Certification **CUL-6** are based on the premise of the “disturbed nature” of the El Segundo project site and draw a comparison to the Huntington Beach Energy Project. However, in this project there are some project components for which Staff lack information about the depth of proposed digging, thickness of fill, or both (See table below, taken from Cultural Resources Table 2 of the Final Staff Assessment, Part A). In the absence of this information, Staff has assumed that excavation in the subject areas could exceed the depth of fill. Staff previously sought this information from the project owner at the beginning of this proceeding but remains without the information for the project components identified in this table. As a result, Condition of Certification **CUL-6** is based upon the absence of information. Staff requests that NRG consider the following unknowns as these are the project components for which the parties are in disagreement about Condition of Certification **CUL-6**.

Project Component	Maximum Depth of Excavation	Depth of Previous Excavation	Depth of Fill	References
Access road	3.5 feet	Unknown	Unknown	ESEC 2013b:Figure CR-1
Natural gas compression station/Fuel gas compressor building	Unknown	4–10 feet	4–10 feet	ESEC 2013a:2-7, Figure 1-2b; ESEC 2013b:Figure CR-1
Forwarding pump	3 feet	Unknown	Unknown	ESEC 2013a:2-11; ESEC 2013c:53–54
Demolish and remove Units 3 and 4	5–20 feet	8.00–14.75 feet	Unknown	ESEC 2013b:Figure CR-1; Project Description
Remove and remediate ESEC retention basins	Unknown	Unknown	Unknown	ESEC 2013a:1-1

Thank you again for your December 8, 2014 comments to FSA Part A. Staff hope that this reply will assist in informing NRG about their opinions. Please contact me at 916-654-3940 or (e-mail) if you have any questions.

Sincerely,

Camille Remy Obad, J.D. LEED AP
Compliance Project Manager
Camille.Remy-Obad@energy.ca.gov