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EVIDENTIARY HEARING FOR THE AMENDMENT TO THE
EL SEGUNDO ENERGY CENTER

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of: )
) )
El Segundo Energy Center Amendment ) Docket No. 00-AFC-14C
Evidentiary Hearing )
) ______________________________________________________________

EMBASSY SUITES LAX SOUTH
MADRID ROOM
1441 EAST IMPERIAL HIGHWAY
EL SEGUNDO, CALIFORNIA

TUESDAY, NOVEMBER 17, 2015

11:00 A.M.

Reported by:
Martha L. Nelson
APPEARANCES

COMMISSIONERS
Karen Douglas, Presiding Member
Janea Scott

HEARING OFFICER
Raoul Renaud

STAFF
Jennifer Nelson, Adviser to Commissioner Douglas
Courtney Smith, Adviser to Commissioner Scott
Rhett DeMesa, Adviser to Commissioner Scott
Elena Miller, Senior Staff Attorney
Camille Remy Obad, J.D., LEED AP, Compliance Project Manager
Paul Kramer

PUBLIC ADVISER
Shawn Pittard, Assistant Public Adviser

PETITIONER
John McKinsey, Partner, Locke Lord LLP
George Piantka, Senior Director, NRG

PUBLIC COMMENT
John Yee, South Coast Air Quality Management District
Diane Gatza, West Basin Municipal Water District
## EXHIBITS

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<td><strong>PETITIONER</strong></td>
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PROCEEDINGS

EL SEGUNDO, CALIFORNIA, TUESDAY, NOVEMBER 17, 2015

(The meeting commenced at 11:14 a.m.)

PRESIDING MEMBER DOUGLAS: Good morning. Welcome to the Evidentiary Hearing for the El Segundo Energy Center Amendment.

I’ll start by introducing the committee. I’m Karen Douglas. I’m the presiding member of this committee. And to the left of the hearing adviser is my colleague, Janea Scott. She’s the associate member of the committee. Hearing Adviser Raul Renaud is to my left, and to my right, Jennifer Nelson, my adviser. To Commissioner Scott’s left are her advisers, Courtney Smith and Rhetta DeMesa.

Let’s see, the Public Adviser’s Office, are they here? Shawn Pittard, he’s here.

Thank you, Shawn.

And with that, let me ask the parties to introduce themselves, beginning with the Petitioner.

MR. MCKINSEY: Good morning, Commissioners. John McKinsey, counsel for the project owner and petitioner, El Segundo Energy Center, LLC. And to my left is George Piantka from NRG, representing the project owner.

PRESIDING MEMBER DOUGLAS: Thank you.
And Staff?

MS. MILLER: Good morning, Commissioners, Elena Miller on behalf of the Energy Commission. And to my right is our Compliance Project Manager Camille Remy Obad.

PRESIDING MEMBER DOUGLAS: Thank you.

All right, do we have any intervenors represented here today, Michelle Murphy or Bob Perkins? All right, no intervenors.

Do we have present or on the phone any elected officials representing state, county, or local or tribal jurisdictions, or federal?

Any elected -- any representatives of government agencies, South Coast Management District or others?

Could you please introduce yourself?

MR. YEE: Good morning. Representing the South Coast Air Quality Management District, I’m John Yee. And I have with me Christian Aviles.

PRESIDING MEMBER DOUGLAS: Thank you.

MR. YEE: Thank you.

PRESIDING MEMBER DOUGLAS: Thanks for being here today.

Anyone from any other government agencies?

Could you introduce yourself, as well?

MS. GATZA: Hi. Good morning. I’m Diane Gatza, the Water Resources Engineer with West Basin Municipal Water
PRESIDING MEMBER DOUGLAS: Thank you. Thanks for being here.

All right, so this morning’s portion of the Evidentiary Hearing will be dedicated to receiving evidence from the parties that will comprise the formal evidentiary record upon which the committee will base its proposed decision.

In addition, we’ve scheduled a public comment period, beginning at 5:00 p.m.

I’ll now turn the proceedings over to our Hearing Officer Raul Renaud.

HEARING OFFICER RENAUD: Thank you, Commissioner Douglas. (Clears throat.) Excuse me.

The Evidentiary Hearing is an administrative adjudicatory proceeding to receive evidence into the official evidentiary record from the parties. The purpose of this hearing is to obtain evidence on the Petition to Amend the El Segundo Energy Center. The official record of this proceeding will include the sworn testimony of the parties, whether given orally here today or by written declaration, the reporter’s transcript of the evidentiary hearing, the exhibits received into evidence, any briefs, pleadings, orders, notices, and comments submitted by members of the public.
We do have a court reporter here today, taking down every word that is said in the room. For that reason, it’s important that when you’re speaking, speak individually rather than on top of someone else so that we can make sure to get a clear record.

Members of the public who are not parties are welcome and invited to observe the proceedings. There will also be an opportunity for the public to provide comment today, both when we have concluded the evidentiary portion of the hearing and beginning at 5:00 p.m.

The public comment period is intended to provide an opportunity for persons who attend the hearing to address the committee. Members of the public may submit written comments if they would prefer that to speaking directly to the committee.

Members of the public who wish to speak should fill out a blue card, which you can obtain from our Public Adviser representative, Shawn, in the back there. If you -- all right, if you’d prefer not to speak publicly, you can still write your written comment on that blue card and it will be entered into the record.

So Parties, we held a prehearing conference on October 21. And at that time we learned from you that most of the issues in this matter are undisputed, that is the parties are in agreement on the issues. And later on in the
proceedings today we’ll ask the committee -- the parties to stipulate to the admission of their evidence and testimony on the undisputed issues as set forth in the exhibit list and to waive cross examination on those issues.

As to the few disputed items that were identified at the prehearing conference, we note that since that time you’ve held a workshop which took place on November 12th. The committee would like to hear from the parties regarding the status of those issues and whether or not you still have any issues that will require adjudication, and as to which you plan to offer testimony or cross examination today.

The exhibit list is available on the commission’s electronic docket. And I’ve also brought a few copies with me today if anybody needs one.

Why don’t we begin with the petitioner; you can tell us where things stand.

MR. MCKINSEY: Thank you. Again, this is John McKinsey.

So following the workshop, which was very productive, we identified some ideas for resolving the -- the disputes on the remaining issues and through some docketing of various versions, including what we -- the project owner has just docketed this morning, I believe that we have agreement on the remaining areas that were in dispute. And so there are no areas in dispute. But we
probably need to confirm those final things.

This morning we docketed a document called Project Owner’s Proposed Final Wording of COCs. It’s TN Number 206653. And I believe we’re going to identify that as an exhibit, which would be 1044. And that document has proposed final wording of Contingency 2, Compliance 13, and a final version of the Air Quality errata.

One thing that we didn’t actually state in that document that I believe Staff and the project owner agreed to last week was that with Contingency 2 being approved, Contingency 4 would be removed. It is not necessary.

And so with that, I don’t believe there are any areas in dispute at all between Staff and project owner.

HEARING OFFICER RENAUD: All right. Thank you for that summary and good news.

Any comments from the staff here?

MS. MILLER: Staff agrees with the statement made by Mr. McKinsey.

I just wanted to clarify that since the docket number -- well, we’re calling it Exhibit 1042, Docket Number 206569, Project Owner’s Pre-Workshop Comments, which were docketed before the November 12th workshop, there’s been a lot of work done and we want to thank them. Staff worked diligently. I know that there was a lot of work on their side. As a result we’ve agreed on Contingency 1.
Contingency 3 was withdrawn. And I think that everything else Mr. McKinsey has addressed.

I just want to make sure that the committee is -- because it’s a lot to catch up on, we realize.

HEARING OFFICER RENAUD: Very good. Well, thank you.

So you’ve mentioned some additional documents that need to be marked and entered into the record. Why don’t we go forward with those, Mr. McKinsey. The last exhibit for the petitioner is 1041. You mentioned the -- the pre-workshop comments were mentioned here, and that’s TN 206569.

Do you wish to enter that into the record?

MR. MCKINSEY: Correct.

HEARING OFFICER RENAUD: All right.

MR. MCKINSEY: And we’d propose that as Exhibit Number 1042.

HEARING OFFICER RENAUD: All right. Thank you. That will be identified as 1042.

(Whereupon, Petitioner’s Exhibit Number 1042, Marked for Identification)

HEARING OFFICER RENAUD: There’s another document called the Supplemental Identification of Witnesses and Testimony, TN 206571. Are you interested in having that identified as an exhibit?

MR. MCKINSEY: Yes. That would be Exhibit Number
HEARING OFFICER RENAUD: Thank you. That will be identified then as 1043.

(Whereupon, Petitioner’s Exhibit Number 1043, Marked for Identification)

HEARING OFFICER RENAUD: And you just mentioned a newly docketed document, the project owner’s Proposed Final Wording of Conditions of Certification, TN 206653. And that will be marked for identification as Exhibit 1044.

(Whereupon, Petitioner’s Exhibit Number 1044, Marked for Identification)

HEARING OFFICER RENAUD: Okay. Are there any other exhibits anybody wishes to enter?

MS. MILLER: There are no other exhibits from Staff.

HEARING OFFICER RENAUD: All right. At the prehearing conference, Mr. McKinsey, you did indicate that there -- you may have some testimony on air quality and public health. Are you -- is that still the intention today?

MR. MCKINSEY: Thank you, yes. What I -- what I had suggested was depending on the level of public participation that we should be prepared, particularly in the area, I thought, of air quality and public health to really more present some type of a summary. I’m not sure
that we actually have any members of the public present on
the phone or in the room, so we may not even need to do
that.

HEARING OFFICER RENAUD: All right.

MR. MCKINSEY: But there wasn’t -- we didn’t feel
a need to present any testimony for purposes of changing
anything.

HEARING OFFICER RENAUD: All right. What we are
required to do in that area, though, is to have a witness
from the Air District to authenticate the FDOC under Title
20, section 1744.5(c). I note we do have representatives of
the South Coast Air Quality Management District. So I would
suggest that this might be a good time to take care of that
bit of business.

Come on forward.

MR. YEE: Yes, sir.

HEARING OFFICER RENAUD: State your name for the
record.

MR. YEE: My name is -- is John Yee. I work for
the South Coast Air Quality Management District.

HEARING OFFICER RENAUD: Okay. Thank you. And
I’m going to swear you in. Please raise your right hand.

(Whereupon, John Yee is duly sworn.)

MR. YEE: I do.

HEARING OFFICER RENAUD: All right. It’s up to
either -- either of -- either counsel can ask questions or I can do it. Do you have a preference?

MS. MILLER: I have no questions for the witness.

HEARING OFFICER RENAUD: All right.

MR. MCKINSEY: I’m assuming you want the witness to authenticate --

HEARING OFFICER RENAUD: Yes.

MR. MCKINSEY: -- just the final determination of compliance? I’m just trying to find the exhibit number for it. And I think we do have it as an exhibit, I just can’t --

HEARING OFFICER RENAUD: Yeah. I think it’s actually -- it is 2003.

MR. MCKINSEY: Thank you.

HEARING OFFICER RENAUD: And 2004 is the Appendix H.

MR. MCKINSEY: Correct.

So, Mr. Yee, we have two exhibits in the dockets. One of them is the Final Determination of Compliance issued by South Coast. And then the second one is Appendix H, Revised FDOC that was submitted, as well. They’re Exhibit Numbers, in our record, 2003 and 2004.

And I’d like you to just -- have you examined those? Are you familiar with both of those docs?

MR. YEE: I am familiar with both documents, yes.
MR. MCKINSEY: And can you authenticate that those are, indeed, the Final Determination of Compliance by South Coast Air Quality Management District?

MR. YEE: I do.

MR. MCKINSEY: Great. Thank you.

HEARING OFFICER RENAUD: Okay. Any -- any questions from Staff?

MS. MILLER: None.

HEARING OFFICER RENAUD: All right. I think we’re -- that takes care of it, unless there’s any questions from the committee. No? Okay.

Thank you for coming.

MR. YEE: Thank you.

HEARING OFFICER RENAUD: All right. So if neither of you intends to call any witnesses, we will then proceed by declaration to -- and stipulation to enter your evidence into the record.

We’ll start with the -- with the applicant. And I think we can make this quite simple. I will just simply ask Mr. McKinsey to agree that your evidence and testimony as set forth in Exhibits 1000 through 1044 be admitted into the record as the -- as the petitioner’s evidence and testimony in this matter.

MR. MCKINSEY: That’s correct.

HEARING OFFICER RENAUD: And does the staff
stipulate to that?

MS. MILLER: Staff so stipulates.

HEARING OFFICER RENAUD: Thank you very much. Those will be -- those exhibits, then, will be admitted into the record.

(Whereupon, Petitioner’s Exhibit Numbers 1000 through 1044, Admitted)

HEARING OFFICER RENAUD: Okay. Let’s turn to Staff. Same question for you as to the Staff Exhibit Numbers 2000 through 2010. Will Staff agree to admit those or to enter those into the record by stipulation?

MS. MILLER: Yes.

HEARING OFFICER RENAUD: All right. Any objection from the petitioner?

MR. MCKINSEY: The petitioner so stipulates.

HEARING OFFICER RENAUD: Very good. Then those will be received into evidence. Thank you.

(Whereupon, Staff’s Exhibit Numbers 2000 through 2010, Admitted)

HEARING OFFICER RENAUD: Well, I think we have just a couple of housekeeping matters, and then we may actually be done here. Okay. Does -- is there any -- does either party have any interest in briefing any matters in this case?

Staff?
MS. MILLER: I’m looking at my client to see if there’s any desire. I see no desire.

HEARING OFFICER RENAUD: All right.

MS. MILLER: If the committee would like us to address any item, we’d be happy to.

HEARING OFFICER RENAUD: Well, from what I’ve seen of the -- of the exhibits and the newly docketed ones, it looks like you got a pretty clear explanation in there of exactly what the parties have agreed to. So I think -- I think we’ll be okay.

Any desire to brief anything, Mr. McKinsey?

MR. MCKINSEY: I would respond. One thing that -- at the prehearing conference there was some discussion around our clutch testimony.

HEARING OFFICER RENAUD: Uh-huh.

MR. MCKINSEY: And there was a condition, Contingency 3, which the staff has noted that we both agreed to withdraw. And I think that the decision on that is reflected in the filings that we’ve made since the prehearing conference as to why that is the case, and it’s supported by the testimony.

But I just wanted to call that to your attention, that the -- all the testimony related to and evaluation of the potential use for clutches is -- is in the record. And we simply no longer saw the need to have a condition related
to potential use for clutches and that’s why that’s removed, Contingency 3.

HEARING OFFICER RENAUD: Very good. I understand that. And the, as you said, the testimony is in the record. The committee has seen it and will take that into account in preparing the -- the Presiding Members Proposed Decision.

Okay.

All right, with that, I’ll just check to see if there’s anyone on the phone or present in the room who wishes to make a public comment? If you’re on the phone and wish to make a public comment, please go ahead.

All right, anyone in the room wish to make a public comment?

All right, I think that takes care of our business for this morning. We did include a session for public comment starting today at five o’clock. We’ll be back here in this same location. And until then, this hearing is adjourned. Thank you.

(Off the record from 11:31 a.m.)

(On the record at 5:00 p.m.)

HEARING OFFICER RENAUD: Let’s go back on the record. This is Raul Renaud, the hearing officer here for the El Segundo Energy Center Amendment Evidentiary Hearing here in El Segundo, California. I’m here with the -- with Commissioners Douglas and Scott and -- and the parties.
We’ve returned for our 5:00 p.m. public comment session.

Before we proceed to public comment, we do have one additional bit of business to transact. We have, I understand, two additional exhibits that the -- the staff is seeking to introduce. And I’ll turn it over to Elena Miller to describe that for us.

MS. MILLER: Yes. We’d like to add Exhibit Number 2011 with the document number TN 205814. It’s a transmittal letter from South Coast Air Quality Management District.

And the second is Exhibit Number 2012, document number TN 205815. And that’s the revised Final Determination of Compliance, Appendix I.

HEARING OFFICER RENAUD: Okay. Thank you. And those -- those documents are in the docket. And we’ve now identified them as Exhibits 2011 and 2012.

(Whereupon, Staff’s Exhibit Numbers 2011 and 2012, Marked for Identification)

HEARING OFFICER RENAUD: And would you like to move those into evidence?

MS. MILLER: Yes.

HEARING OFFICER RENAUD: All right.

Let me ask the petitioner, any objection to those two additional exhibits coming into evidence?

MR. MCKINSEY: No objections.

HEARING OFFICER RENAUD: All right. Thank you.
Those will then be admitted. Thank you.

(Whereupon, Staff’s Exhibit Numbers 2011 and 2012, Admitted)

MS. MILLER: Thank you.

HEARING OFFICER RENAUD: All right. I think that’s all the business we have to transact for the evidentiary hearing portion of this proceeding.

So we’ll now commence the public comment session -- section -- portion.

Let me ask first if there’s anyone here in the room who wishes to make a public comment? Okay.

Hearing none, let me ask if there’s anyone who is on the phone or our WebEx system who wishes to make a public comment?

All right, just one moment, please.

(Colloquy Between Presiding Member Douglas and Hearing Officer Celli)

HEARING OFFICER RENAUD: Okay. In the -- for the -- in the meeting agenda we indicated that public comment would open at 5:00 p.m. and would remain open until -- or would not adjourn before 5:30. So to stick with that promise, we’re going to keep the lines open and make public comment available until 5:30.

So with that, I’ll -- we’ll simply wait and see if anybody wishes to make a public comment. And at that --
after that, we’ll adjourn.

(Off the record at 5:03 p.m.)

(On the record at 5:30 p.m.)

COMMISSIONER SCOTT: Hello. This is Commissioner Scott. It is 5:30. And we just want to make sure, is there anyone in the room who would like to make a public comment? Okay.

Seeing no one, is there anyone on the phone or on the WebEx who would like to make a public comment? Now is your opportunity. Okay.

Hearing none --

MR. KRAMER: No, I just unmuted everyone.

COMMISSIONER SCOTT: I’m sorry, we just unmuted everyone. So if there’s anyone on the WebEx or on the phone who would like to make a comment, please go ahead. Okay.

Hearing none, we are now adjourned.

(Whereupon the California Energy Commission Evidentiary Hearing of the El Segundo Energy Center Amendment adjourned at 5:31 p.m.)
CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of November, 2015.

[Signature]

MARTHA L. NELSON
CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

[Signature]

MARTHA L. NELSON, CERT**367

November 30, 2015