

DOCKETED

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January 22, 2014

VIA E-FILING

El Segundo Energy Center Petition to Amend (00-AFC-14C)
Robert Oglesby, Executive Director
Mary Dyas, Compliance Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: El Segundo Energy Center (00-AFC-014C)
Condition of Certification PAL-6: Final Paleontological Report
Application for Confidential Designation of Paleontological Resources Data

Dear Mr. Oglesby and Ms. Dyas:

El Segundo Energy Center LLC ("**ESEC LLC**") submits this Application for Designation of Confidential Records ("**Application**") with respect to the attached, final paleontological resources report dated January 2014 (the "**Confidential Information**") in Attachment A hereto. This Confidential Information pertains to paleontological resources located at and in the vicinity of the El Segundo Energy Center ("**ESEC**") project to remove former Units 1 and 2, and replace them with new Units 5 through 8 (00-AFC-014C) (collectively, the "**Project**"). The California Energy Commission's Condition of Certification PAL 7 (the "**Paleo Report COC**") for the Project requires ESEC LLC to submit a paleontological resources report within ninety (90) days following completion of the Project's ground disturbing activities. ESEC LLC completed ground disturbing activities on or around October 22, 2013, and hereby submits this Application in satisfaction of the Paleo Report COC. ESEC LLC's Application for Certification and all of the Paleontological Conditions of Certification for the Project address paleontological resources in detail.

ESEC LLC hereby requests confidential designation of the attached Confidential Information under Title 20, California Code of Regulations, section 2505. ESEC LLC understands that, pursuant to Title 20, California Code of Regulations sections 2505(a)(2) and (a)(3)(B), the attached information will not be publicly disclosed while this Application for Confidential Designation, or any appeal of the Commission's determination regarding this Application, remains pending.

January 22, 2014

Page 2

ESEC LLC provides the following information in support of its Application:

(a) Description/Separation of the Confidential Records.

Attachment A, which is marked "Confidential," is the subject of this Application and pertains to paleontological resources in and around the Project area that were located during ESEC LLC's implementation of the Project. This information includes confidential data and maps of paleontological resource sites, and confidential results of field surveys and archival research regarding those paleontological resources.

(b) Specific Indication of Those Parts of the Record to be Kept Confidential.

Applicant requests that the Commission designate the attached Confidential Information as confidential in its entirety. A summary of the paleontological resources in and around the Project area, and an analysis of the Project's impacts on those resources are presented in the enclosed Attachment A.

(c) The Length of Time the Record Should be Kept Confidential.

The Confidential Information in Attachment A should be kept confidential permanently. The information contained therein assists in identifying potential locations of culturally sensitive resources in the Project areas. Consequently, any disclosure of this information could heighten the risk of unauthorized excavation of such resources, and/or unauthorized removal of the same from the resource locations identified in the report. This concern would still exist with respect to the general Project location, including related Project facilities off-site, even after the conclusion of this compliance phase of the Project.

(d) Provisions of Law Allowing the Commission to Keep the Record Confidential: Disclosure of the Information is Required by the Paleo Report COC and is Against the Public Interest.

As previously noted, the Confidential Information assists in identifying paleontological resources present in and around the Project site. Consequently, the Paleo Report COC requires ESEC LLC to submit the enclosed Paleontological Resources Report under confidential cover. Furthermore, the Commission may designate a record as confidential and require that it not be publicly disclosed if the California Public Records Act provides for that record to be treated as confidential, and if the party giving the Commission custody of such record provides certain information about that record. [20 CCR §2505(a)(1).] The Public Records Act protects the confidentiality of any records that are exempted from disclosure under provisions of the California Evidence Code relating to privilege, including Evidence Code section 1040. (Govt. Code §6254(k).) Evidence Code section 1040 sets forth a privilege that entitles public entities to refuse to disclose official information acquired in confidence by a public employee in the course of his or her duties, when disclosure of the information is against the public interest because there is a need to preserve the confidentiality of the information that outweighs the need for disclosure in the interest of justice. This privilege applies here to protect the Confidential Information from disclosure in order to guard against potential unauthorized excavation or removal of paleontological resources.

(e) *Aggregation and Masking of the Confidential Information.*

The Confidential Information cannot be masked or aggregated without rendering it useless because, as discussed above, the document discloses the types and locations of paleontological resources and the actions undertaken to locate, study and preserve them.

(f) *The Submitted Record Is Presently Confidential.*

Consultant has not disclosed the paleontological resources information to anyone other than its employees, affiliate employees, consultants, and attorneys assisting Applicant with efforts related to the Petition. Furthermore, Applicant has not released any of the information contained in Attachment A to any member of the general public and has prohibited its employees, affiliate employees, consultants and attorneys from releasing to the public any portion of such information at any time.

I certify under penalty of perjury that the information contained in this Application is true, correct, and complete to the best of my knowledge. As an attorney for ESEC LLC, I am authorized to make the above certification and to submit this Application on behalf of ESEC LLC.

Locke Lord LLP

By: 

John A. McKinsey

Attorneys for El Segundo Energy Center LLC

JAM: awph

Enclosure

ATTACHMENT A

FINAL PALEONTOLOGICAL RESOURCES REPORT

(See attached.)