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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

Rhetta 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

	<u>MARKED</u>	<u>ADMITTED</u>
<u>PETITIONER</u>		
1042	7	12
1043, 1044	8	12
1000-1041		12
<u>STAFF</u>		
2000-2010		12
2011, 2012	15	16

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P R O C E E D I N G S

11:14 A.M.

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.

1 And Staff?

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

5 PRESIDING MEMBER DOUGLAS: Thank you.

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

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

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

14 Could you please introduce yourself?

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

18 PRESIDING MEMBER DOUGLAS: Thank you.

19 MR. YEE: Thank you.

20 PRESIDING MEMBER DOUGLAS: Thanks for being here
21 today.

22 Anyone from any other government agencies?

23 Could you introduce yourself, as well?

24 MS. GATZA: Hi. Good morning. I'm Diane Gatza,
25 the Water Resources Engineer with West Basin Municipal Water

1 District.

2 PRESIDING MEMBER DOUGLAS: Thank you. Thanks for
3 being here.

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

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

11 I'll now turn the proceedings over to our Hearing
12 Officer Raul Renaud.

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

15 The Evidentiary Hearing is an administrative
16 adjudicatory proceeding to receive evidence into the
17 official evidentiary record from the parties. The purpose
18 of this hearing is to obtain evidence on the Petition to
19 Amend the El Segundo Energy Center. The official record of
20 this proceeding will include the sworn testimony of the
21 parties, whether given orally here today or by written
22 declaration, the reporter's transcript of the evidentiary
23 hearing, the exhibits received into evidence, any briefs,
24 pleadings, orders, notices, and comments submitted by
25 members of the public.

1 We do have a court reporter here today, taking
2 down every word that is said in the room. For that reason,
3 it's important that when you're speaking, speak individually
4 rather than on top of someone else so that we can make sure
5 to get a clear record.

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

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

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

22 So Parties, we held a prehearing conference on
23 October 21. And at that time we learned from you that most
24 of the issues in this matter are undisputed, that is the
25 parties are in agreement on the issues. And later on in the

1 proceedings today we'll ask the committee -- the parties to
2 stipulate to the admission of their evidence and testimony
3 on the undisputed issues as set forth in the exhibit list
4 and to waive cross examination on those issues.

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

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

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

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

19 So following the workshop, which was very
20 productive, we identified some ideas for resolving the --
21 the disputes on the remaining issues and through some
22 docketing of various versions, including what we -- the
23 project owner has just docketed this morning, I believe that
24 we have agreement on the remaining areas that were in
25 dispute. And so there are no areas in dispute. But we

1 probably need to confirm those final things.

2 This morning we docketed a document called Project
3 Owner's Proposed Final Wording of COCs. It's TN Number
4 206653. And I believe we're going to identify that as an
5 exhibit, which would be 1044. And that document has
6 proposed final wording of Contingency 2, Compliance 13, and
7 a final version of the Air Quality errata.

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

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

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

16 Any comments from the staff here?

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

19 I just wanted to clarify that since the docket
20 number -- well, we're calling it Exhibit 1042, Docket Number
21 206569, Project Owner's Pre-Workshop Comments, which were
22 docketed before the November 12th workshop, there's been a
23 lot of work done and we want to thank them. Staff worked
24 diligently. I know that there was a lot of work on their
25 side. As a result we've agreed on Contingency 1.

1 Contingency 3 was withdrawn. And I think that everything
2 else Mr. McKinsey has addressed.

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

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

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

12 Do you wish to enter that into the record?

13 MR. MCKINSEY: Correct.

14 HEARING OFFICER RENAUD: All right.

15 MR. MCKINSEY: And we'd propose that as Exhibit
16 Number 1042.

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

19 (Whereupon, Petitioner's Exhibit Number 1042, Marked
20 for Identification)

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

25 MR. MCKINSEY: Yes. That would be Exhibit Number

1 1043.

2 HEARING OFFICER RENAUD: Thank you. That will be
3 identified then as 1043.

4 (Whereupon, Petitioner's Exhibit Number 1043, Marked
5 for Identification)

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

10 (Whereupon, Petitioner's Exhibit Number 1044, Marked
11 for Identification)

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

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

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

21 MR. MCKINSEY: Thank you, yes. What I -- what I
22 had suggested was depending on the level of public
23 participation that we should be prepared, particularly in
24 the area, I thought, of air quality and public health to
25 really more present some type of a summary. I'm not sure

1 that we actually have any members of the public present on
2 the phone or in the room, so we may not even need to do
3 that.

4 HEARING OFFICER RENAUD: All right.

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

8 HEARING OFFICER RENAUD: All right. What we are
9 required to do in that area, though, is to have a witness
10 from the Air District to authenticate the FDOC under Title
11 20, section 1744.5(c). I note we do have representatives of
12 the South Coast Air Quality Management District. So I would
13 suggest that this might be a good time to take care of that
14 bit of business.

15 Come on forward.

16 MR. YEE: Yes, sir.

17 HEARING OFFICER RENAUD: State your name for the
18 record.

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

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

23 (Whereupon, John Yee is duly sworn.)

24 MR. YEE: I do.

25 HEARING OFFICER RENAUD: All right. It's up to

1 either -- either of -- either counsel can ask questions or I
2 can do it. Do you have a preference?

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

4 HEARING OFFICER RENAUD: All right.

5 MR. MCKINSEY: I'm assuming you want the witness
6 to authenticate --

7 HEARING OFFICER RENAUD: Yes.

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

12 HEARING OFFICER RENAUD: Yeah. I think it's
13 actually -- it is 2003.

14 MR. MCKINSEY: Thank you.

15 HEARING OFFICER RENAUD: And 2004 is the Appendix
16 H.

17 MR. MCKINSEY: Correct.

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

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

25 MR. YEE: I am familiar with both documents, yes.

1 MR. MCKINSEY: And can you authenticate that those
2 are, indeed, the Final Determination of Compliance by South
3 Coast Air Quality Management District?

4 MR. YEE: I do.

5 MR. MCKINSEY: Great. Thank you.

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

8 MS. MILLER: None.

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

12 Thank you for coming.

13 MR. YEE: Thank you.

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

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

24 MR. MCKINSEY: That's correct.

25 HEARING OFFICER RENAUD: And does the staff

1 stipulate to that?

2 MS. MILLER: Staff so stipulates.

3 HEARING OFFICER RENAUD: Thank you very much.

4 Those will be -- those exhibits, then, will be admitted into
5 the record.

6 (Whereupon, Petitioner's Exhibit Numbers 1000 through
7 1044, Admitted)

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

12 MS. MILLER: Yes.

13 HEARING OFFICER RENAUD: All right.

14 Any objection from the petitioner?

15 MR. MCKINSEY: The petitioner so stipulates.

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

18 (Whereupon, Staff's Exhibit Numbers 2000 through 2010,
19 Admitted)

20 HEARING OFFICER RENAUD: Well, I think we have
21 just a couple of housekeeping matters, and then we may
22 actually be done here. Okay.

23 Does -- is there any -- does either party have any
24 interest in briefing any matters in this case?

25 Staff?

1 MS. MILLER: I'm looking at my client to see if
2 there's any desire. I see no desire.

3 HEARING OFFICER RENAUD: All right.

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

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

11 Any desire to brief anything, Mr. McKinsey?

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

15 HEARING OFFICER RENAUD: Uh-huh.

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

22 But I just wanted to call that to your attention,
23 that the -- all the testimony related to and evaluation of
24 the potential use for clutches is -- is in the record. And
25 we simply no longer saw the need to have a condition related

1 to potential use for clutches and that's why that's removed,
2 Contingency 3.

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

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

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

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

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

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

21 HEARING OFFICER RENAUD: Let's go back on the
22 record. This is Raul Renaud, the hearing officer here for
23 the El Segundo Energy Center Amendment Evidentiary Hearing
24 here in El Segundo, California. I'm here with the -- with
25 Commissioners Douglas and Scott and -- and the parties.

1 We've returned for our 5:00 p.m. public comment session.

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

7 MS. MILLER: Yes. We'd like to add Exhibit Number
8 2011 with the document number TN 205814. It's a transmittal
9 letter from South Coast Air Quality Management District.

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

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

16 (Whereupon, Staff's Exhibit Numbers 2011 and 2012,
17 Marked for Identification)

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

20 MS. MILLER: Yes.

21 HEARING OFFICER RENAUD: All right.

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

24 MR. MCKINSEY: No objections.

25 HEARING OFFICER RENAUD: All right. Thank you.

1 Those will then be admitted. Thank you.

2 (Whereupon, Staff's Exhibit Numbers 2011 and 2012,
3 Admitted)

4 MS. MILLER: Thank you.

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

8 So we'll now commence the public comment
9 session -- section -- portion.

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

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

15 All right, just one moment, please.

16 (Colloquy Between Presiding Member Douglas and Hearing
17 Officer Celli)

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

24 So with that, I'll -- we'll simply wait and see if
25 anybody wishes to make a public comment. And at that --

1 after that, we'll adjourn.

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

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

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

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

11 Hearing none --

12 MR. KRAMER: No, I just unmuted everyone.

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

16 Hearing none, we are now adjourned.

17 (Whereupon the California Energy Commission Evidentiary

18 Hearing of the El Segundo Energy Center Amendment

19 adjourned at 5:31 p.m.)

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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..



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.



MARTHA L. NELSON, CERT**367

November 30, 2015