

November 29, 2007

California Energy Commission
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DOCKET 01-AFC-24C	
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Subject: Non-Compliance Complaint & Public Records Act Request – Palomar Energy Center
(Docket No. 01-AFC-24C)

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Both the previous and current members of the Compliance Division failed to provide any evidence that the Palomar Energy Center (PEC) had meet requirements set per Order No. 03-0806-05 for initial firing & commercial operational requirements. Nor did the owner of the facility (SDG&E) take the time to respond to meeting these requirements when asked by the public. This order clearly states that the proposed landscaping would not adequately screen the project from the residential views represented by KOPs 3, 6, 7, 8, and 9. The project would also not appear well integrated into the existing landscape and would require specific mitigation measures. Effective implementation of Condition of Certification VIS-4 would only bring the project into compliance with this requirement.

The data provided by the CEC only after making a Public Records Request clearly indicates that the PEC had failed to meet compliance per its VIS-4 requirements. The only evidence acquired under my Public Records Request was submitted on 8/26/2005 (Compliance Unit Tracking & Coordination Sheet) gives the indication that only the modified terrain provides the approximate degree of screening done in simulation of the power plant. The photos obtained in my records request clearly shows the fact that no other ERTC construction or landscaping screening of any type had taken place. The VIS-4 PEC Landscape Screening document submitted by Roger Stanhope (Sempra Global) on June 28, 2005 clearly states that no buildings have been constructed to screen the west side of their project from adjacent residences. His documentation also indicates that page 6 of the ERTC Landscaping Plan is attached to represent what should take place thus it is not an actual representation at the time.

With regards to Section 1237(a)(4) of Title 20 requirements, it specifically states under the Conditions of Certification VIS-4 requirements that if "ERTC" construction activities have not provided effective screening of the power plant to nearby west residences 180 days prior to initial firing (Oct 2005), the project owner shall develop and implement a landscape screening plan that provides effective screening of PEC project structures. Those conditions indicate that screening would be based on ERTC construction and landscaping installation "**completed**". Those plans would also include but not necessarily be limited to color simulation for **KOP #3** which specifically addresses residents to the west but also includes **KOPs 6, 7, 8, and 9** residential views for each of the major project structures and that landscape screening would be "**completed prior to the start of commercial operation**".

The project owner not only failed to provide this plan, but the CPM failed to request or enforce these requirements and didn't bother to involve or inform the City of Escondido of these requirements that requires their review and comments. It was also falsely indicated by the previous CPM that there were no off-site requirements for screening which is in direct conflict of the Conditions of Certification.

Additional evidence provided to the CPM was the fact that the applicant provided false data during the CEC hearings that included falsely depicting building and cooling tower heights where the CEC failed to take into consideration during those hearings which now also impacts the VIS-4 conditions. It took an independent investigation by the Professional Board of Engineers that found the applicant guilty of using false data. Once again the CPM ignored this data and did nothing to resolve or address the issue.

The latest petition by the applicant includes a proposed design change with yet another huge eye sore in the form of the Thermal Energy Storage (TES) tank that will once again only increase the visual impacts that VIS-4 requirements should have addressed and still have not been implemented. It will also increase the noise heard because the phrase "generally within the boundaries of the existing sound walls" falls way short of the truth once again. Below in Figure 1 is the "ERTC" visual simulation depicted in the screening requirements along with the actual representation from **KOP #3** in Figure 2. The Visual Resources Figure 14B from KOP #3 submitted by the applicant depicts the view without ERTC construction shown below while their actual representation photo is taken from a lower view point down the road at a different address.



B With Proposed Project

Figure 1 (Above)

Figure 2 (Below)





Figure 3

Palomar Hospital Simulation September 2006

Figure 3 above is a good representation of the view from KOP #6 that also shows that no screening or landscaping of any kind has taken place. Unfortunately there also is no timeline or funds available to build the structures represented in tan just south of the simulated hospital which would screen the view from KOP #3. Only at that time would the conditions indicated under Order No. 03-0806-05 provide the proper screening based on ERTC construction and landscaping installation "**completed**" for KOP #3 only.

Figures 2 – 6 also represent that the project based on the CEC own staff analysis Conditions of Certification that unless all mitigation measures are implemented the project would reflect that the visual impacts are adverse because those mitigation measures have not been implemented.



Figure 4 (June 2007)

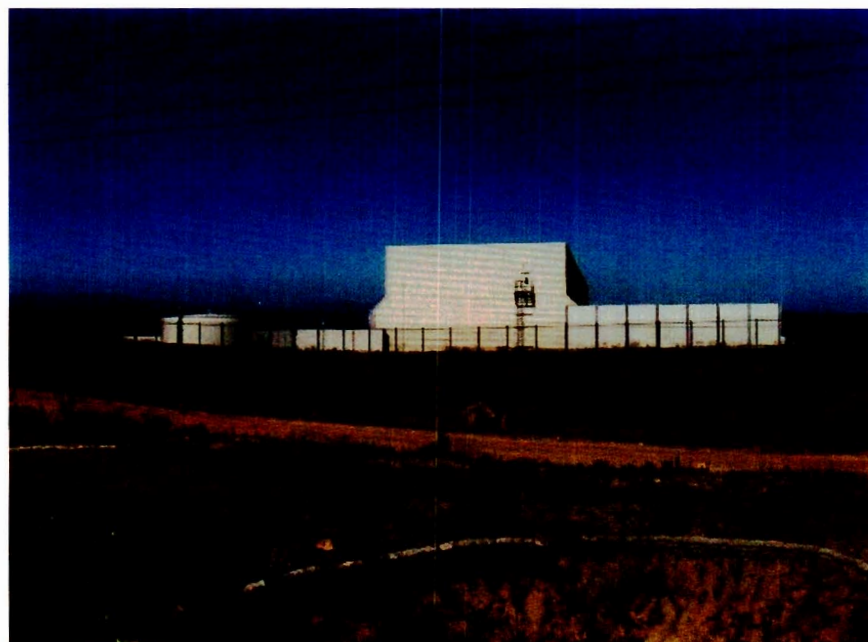


Figure 5 (June 2007)

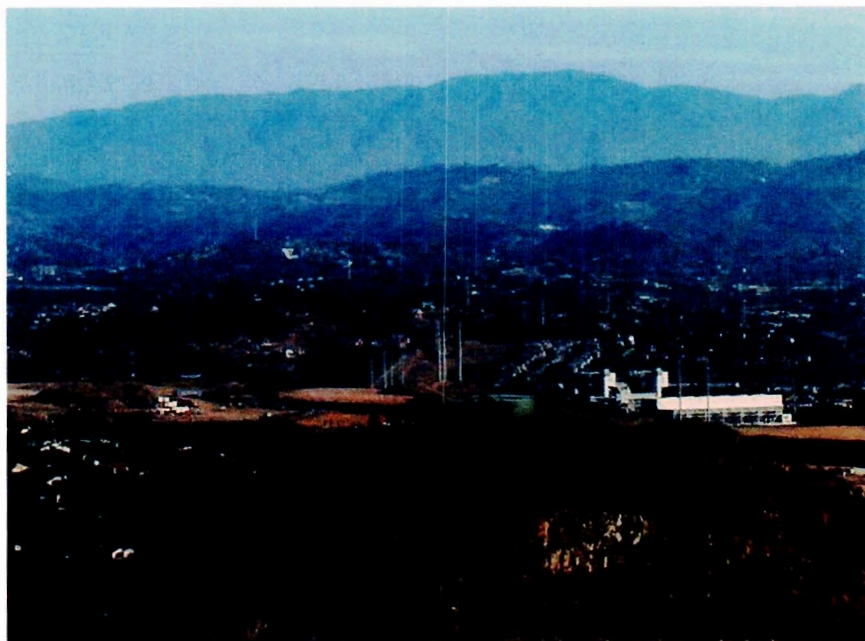


Figure 6 (October 2007)

The data supplied per (Government Code Section 6250 est seq.) and the California Constitution, as amended by passage of PROP 59 on November 3, 2004 does not provide the data that supports claims by the CEC that the Palomar Energy Center has meet its VIS-4 requirements set under the Conditions of Certification required under Commission Adoption Order No. 03-0806-05 at the time those requirements were to have been meet.

Under Section 1237(a)(5) of Title 20, the owner of the PEC at the minimum should be required to implement approved landscape plans for all the designated KOPs to screen their facility utilizing their own easement property shown in Figures 3 – 5 next to their facility.

Under Section 1237(a)(6) of Title 20, the Energy Commission was the lead agency and set these requirements for this project to be built and should have the authority to enforce any action requested unless it has no intention of enforcing its own policies and/or requirements.

Under Section 1237(a)(7) of Title 20, I hereby declare that the comments and evidence submitted are truthful and come directly from the Commission Adoption Order No. 03-0806-05.

Thank you for your time and attention to the matter.

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