

August 16, 2012

In Re: El Segundo Power Redevelopment Project
Complaint 12-CAI-03
Application For Certification 00-AFC-14
California Energy Commission Project CEC-800-2005-001-CMF

California Energy Commission

DOCKETED
12-CAI-03

TN # 66719

AUG 16 2012

To begin our comment on the Staff's August 2, 2012 report we commend the staff, and Mary Dyas in particular, on a professional, fair evaluation of the complaint.

We generally agree with the Staff Report's recommendations. We wish to share some facts we know because we've been neighbors of this project for a long time, and we'd like to clarify some points regarding the recommendations. However, we agree with Staff that:

(1) There is no need for action at this time regarding light pollution because, as Staff notes (p. 12 of the report), "the lighting fixtures ... have not yet been turned on," and if, once they are turned on, "light spillage occurs, NRG will be required to install shielding or hoods to prevent light spillage outside the boundaries of the project site." That is both fair and reasonable.

(2) Staff is also correct that it's impossible to provide temporary landscaping of the berm right now, because the berm hasn't been fully constructed. NRG admits in its Response to Staff's Report that they agreed to ... "A requirement for temporary landscaping early in the Project construction schedule that would be compatible with final landscaping. (COC: VIS-9)" No temporary landscaping has been done and it's too late to do it early in the project, but neither the Commission nor the Staff can do anything about that now. It does point out a problem with relying on NRG's promises. We received emails from George Piantka of NRG dated 3/30/11, 6/18/11, 8/2/11, and 12/7/11 all promising berm construction within a few months or weeks. The berm still isn't built.

(3) Staff is emphatically correct that the current fence line, the southern drainage system, and the half-built retaining wall along 45th Street (Staff Report Items 1,2 and 4) violate both the letter and the spirit of the Conditions of Certification, which were intended to require that the Power Plant owners beautify and improve the area, not desecrate it and make it hazardous to passersby. We have just received NRG's Comments and we are very pleased that NRG has offered to remove the spillway/waterslide. Since all agree, NRG should be ordered to remove it asap. We hope they are able to re-imagine the fence placement and the retaining wall as well.

(4) Finally, we agree with Staff about the asphalt road (Staff Report Item 5). Any permanent road there would violate the Conditions -- as Staff gently puts it, "it is not a feature in the approved landscape plans." NRG in its Response calls this road a "path" (our dictionary says a path is "1. a track or way worn by footsteps; trail. 2. a walk or way for the use of people on foot, as in a park or garden.") and alleges that it is necessary for security reasons. If an unapproved feature can be authorized after the fact by merely stating that security reasons compel its construction, then the entire permitting process becomes a joke. A path for pedestrians just inside the fence on the perimeter of their property is not the same thing as the wide road that is both the first thing we and our neighbors see out our windows and an ugly feature for 45th St. pedestrians and cars.

We wish to bring to the Commission certain facts supporting these positions of the Staff, and which are not mentioned in either the Staff Report or our Complaint, as follows.

NRG Wanted a Wall on their Southern Border in 2001

In the beginning the El Segundo Power Plant owners asserted that their repowering would make the plant and the area around it more visually pleasing and in every way better and nicer than before so there was no requirement that they do anything to enhance anything. When we pointed out that removing the two tanks that had blocked noises, smells and sights of the industrial plant from the resident neighbors to the south for the last 50 years would create a much degraded situation for us and for beachgoers, they changed their position slightly.

What they then proposed was a gigantic ziggurat of a sound wall that can be seen at the [Link to All of Applicant's files in Response to Data Request 2](#) at Attachment 6. The 20 foot high wall would have massively interfered with existing coastal views and it would have rendered our and other homes louder (because of reflective traffic noise) hotter, and immeasurably less livable. At least this first proposed wall was situated well back of the street and included the existing palm trees in both before and after renderings. (Applicant's Response to March 8 Data Requests, received 3/26/01).

Now in 2012 Applicant, in defiance of the Conditions of Certification, is ready to pour a slightly smaller version of the very wall that they initially wanted. This time, however, it is almost directly on 45th St. and along with the fence it creates a safety hazard as well as a visual eyesore.

Removal of the 7 Mature Palm Trees Was Not and Could Not have Been a Condition of Certification

Staff has been led to believe that the Commission understood from NRG's application that the 45th St. palms would be killed. In fact, we believe that palm tree removal was never mentioned in any of the voluminous documents concerning this project. NRG has pointed Staff at some NRG-created photo simulations which seem to show replacement trees, but other NRG KOP's clearly show the existing trees being preserved. We especially point out that KOP-2, an NRG creation which, as the Commission stated in its 2005 decision at pp. 176-177, "depicts the before and after view" of the project, clearly shows the existing trees in both photos. NRG's architectural drawing of the berm (6/14/02) states that "existing palm trees" will be along 45th Street.

Moreover until very recently the property line was not determined. NRG informed us in a January 10, 2012 email that the property line had been "confirmed," Until then maps described the property line as "assumed." Laurie Jester from Manhattan Beach's Planning Department repeated at several hearings that she believed the city line was 6 feet or so north of the 45th St. curb which would place many of the now contested palms on Manhattan Beach property. If NRG had always planned to remove palm trees on land they didn't know they owned, then NRG has more chutzpah than even we, who are in awe of their sometimes regal disregard of law and custom, gave them credit for.

The truth, we believe, is that while seeking its permit NRG never knew they had any right to touch those palms, and never told anyone they intended to destroy them. We think the palms should be retained to carry out the Commission's requirement that NRG provide "visual enhancement" that results "in an overall enhancement of views of the facility from areas accessible to the public" (Condition VIS-1).

Chain Link and Barbed Wire Fence Facts

We would like to clear up a few details regarding the dangerous and unauthorized placement of the chain link fence. First, though 45th Street pedestrians have always walked in the street east of Ocean Ave, that is not the hazardous part of their walk, because cars and pedestrians can see each other clearly at that point. (See Staff Report Figure 1a.)¹

The most dangerous area is west of Ocean Avenue, where there is a blind spot caused by the change in slope at Ocean. Cars coming downhill cannot see pedestrians walking up to Ocean, or vice versa, until the car reaches the Ocean intersection. Worse, many drivers, excited by the steep hill or the spectacular view of the surf, or the possibility of “getting air” by speeding over the flat spot, speed down that part of the hill while invisible pedestrians are walking up. This is a very busy street. A Manhattan Beach traffic study showed a morning one (peak) hour volume of 287 cars on Thursday August 14, 2008. No one has officially counted pedestrians but in the summer dozens of walkers are meeting those hundreds of cars per hour at the blind spot across from our house.

The saving feature, for pedestrians, has always been that they could safely walk in NRG’s sand on the north side of the street, from the Strand to well above Ocean. Now NRG has installed the new fence which prevents that and creates a new dangerous condition, one much more likely to hurt or kill someone, with much greater risk of liability for NRG (or the Cities who let them do it) than the slight risk, which NRG and its predecessors have happily taken for 50 years, of someone twisting his ankle or whatever while walking on sand that NRG owns.

Originally the current fence was to be a temporary one just for construction. George Piantka told us about a week before the fence was moved to its new spot that the engineer had just decided that the dog walkers would have to find another spot to walk their dogs. This is not an approved condition, nor is it something required by palm retention or an enhancement. Instead it is a visual, safety and public use degradation.

Saving or destroying the trees has nothing to do with fence placement. There’s no reason the trees have to be behind the fence. Indeed, NRG representatives have admitted they could put the fence on the berm (in truth they could put it well on the north side of the berm), with no loss of security – actually, that would give them a slightly smaller perimeter to patrol or monitor. Moving the fence would comply not only with the letter of the Conditions, it would carry out their intent that NRG visually enhance the neighborhood, and it would restore public safety.

A Sidewalk/Path Would Be a Feasible and Safe Enhancement

1 There has never been a sidewalk on 45th St. despite Staff's assumption that there was. El Porto was an unincorporated part of LA County until 1980 when it was annexed by Manhattan Beach and there have never been sidewalks along any of its streets (from 45th St. to 37th St.) except privately created ones attached to an individual property. City Planners have confirmed this history. As an aside -- this factual but inconsequential error is a good example of why members of the public should be consulted and their input valued in the licensing process. The law requires it, because we, the public, have a vast store of information that the most well meaning applicant or staff person cannot hope to recreate.

NRG says one of us complainants thought the idea of a sidewalk dangerous. It is Michelle's memory that at a hearing when Lyle and Elsie Cripe requested that NRG put a sidewalk in for the safety of the young children that walk up the hill every day to shop at the convenience store, Bob replied that he liked the rural feel of no sidewalks in the town he had grown up in. After the hearing we both agreed that safety considerations were likely to prevail over Bob's nostalgia. Somehow the request for a sidewalk was lost in further hearings. We, for one, forgot about it.

There are no pedestrian walkways (except for short privately created ones) anywhere in El Porto. People must walk in the street (or on the sand that used to be outside NRG's fence) and only on 45th St. do they face the high volume of cars hurrying down to the beach parking lot. Pedestrians should be walking on the north side of 45th St in order to be facing traffic as is required by law in streets without sidewalks. (Cal.Veh.C. 21956)

A decorative path winding through the palm trees up to the point at Ocean where visibility is clear would be the safest thing NRG could do for the community. A path would not encourage people to walk in the street higher up the hill. They already have to do it if they wish to walk at all.

NRG learned many years ago (when we did) the location of the City of Manhattan Beach's water valve. In fact City Planner Laurie Jester originally suggested that the valve was on Manhattan Beach property. It seems odd to us that it is now behind NRG's fence as in years past we have watched workers repairing the valve and in the future, if the fence remains where it is, their only access is through the power plant. This is not a new feature nor is it a good excuse for building a wall.

The Commission Should Carry Out the Intent of the Licensing Decision

The Conditions of Certification reflect the Commission's intent that NRG provide "visual enhancement" that results "in an overall enhancement of views of the facility from areas accessible to the public" using "...berms [which] shall harmonize with the facility's setting" and "are vegetated and maintained" (Condition VIS-1). To paraphrase, the Commission required NRG to make the place look better and greener after construction than it did before, and it required NRG to produce plans and photos showing how it would look.

If you look at any of the "before" photos in the record you can see that we once lived next to a green bushy hill with mature palm trees. There was a seldom used road down low and mostly hidden just beyond the fence which was 30 feet or more from our front door. The power plant wasn't as attractive as the ocean view to the west but it was pleasant enough. NRG's proposed high road, near fence and hard wall make it uglier than it was before. They are in conflict not only with the detailed rules of the permit, but with its basic visual premise: make it better, make it greener. The Commission should require compliance with that basic premise.

This principle applies to NRG's attempt to remove the existing stately palms. Even if they are replaced with smaller ones (that we have been warned may not survive the harsh ocean climate), this doesn't enhance the view. It doesn't make it better. It doesn't make it greener. And neither does a concrete wall where a vegetated berm was permitted.

NRG now suggests it, presumably alone, investigate "increasing slope steepness as a way to eliminate the retaining wall," its conclusions to be ratified not by the Commission but by the CPM. While we appreciate NRG finally accepting that its retaining wall isn't necessary, increased slope steepness is not

the only, and maybe not the best, way to keep the palms and remove the retaining wall.²

The key here is the process. NRG in its Response to the Staff Report is asking you to change its Conditions of Certification to let it do what it wants regarding berm shape and location, fences and its new road (or “path” as it calls its paved, vehicle-sized structure). It tried doing all this (and the “waterslide”) unilaterally. Now, NRG is again asking to remove Staff, neighbors, and the Commission from the process.

We would welcome NRG developing alternatives to all of its noncompliant plans -- retaining wall, road, fence. However, NRG should be told the present status is unacceptable, and that its new proposals must proceed much as any other request for changes in the Conditions: with Staff and neighbor input, and with the Commission, not some non-Commission CPM, having the final say.

We have tried to engage NRG in discussions about practical ways to make the plant's southern border better and greener. On August 6 we wrote all three members of the NRG service list and offered our home to meet for talks with the hope we might have been able to reach a joint proposal to submit to the Commission by today. NRG never responded.

Lastly we come to a delicate matter. We are dependent upon the good graces of Staff and the Commission in our hope to make right what is happening 30 feet from our home but we have some complaints about this process we are relying on. We are retired lawyers with both the time, the ability and the sense of entitlement that allowed us to devote the many, many hours we have spent attending hearings, storing 6 file boxes of documents in our garage starting 12 years ago, and filing this complaint. A working family that lived next to a noncompliant power plant would find it nigh impossible to do what we have done. And it shouldn't be that way.

///
///
///
///
///
///
///

2 Here are 3 other possibilities; we imagine the Staff could provide others: 1. If the berm's peak moves north a few feet, its southern slope will end before it reaches the palms. There are 2 easy ways to accomplish this: (1) let the berm extend a few feet further into the “parking lot” area than currently planned or (2) if NRG doesn't want to change the berm's footprint, build the retaining wall on the north side of the berm – not on the south, where it's an eyesore. (Incidentally, the plans NRG submitted to get approval had a retaining wall on the north side of the berm, so this is not a surprise or strange suggestion).

2. Lower the peak of the berm in the palms' area. If the berm starts lower, it can end further north, leaving the palms undisturbed. This does have the drawback that, depending on how much the berm is lowered, drivers and pedestrians on 45th Street may see over it into that power plant, but it has the advantage that it would actually save NRG money as well as saving the palms.

3. NRG's representatives themselves originally suggested they could build the berm as is, where is and save the palms by installing planters around each of them. We don't know whether they were right about it, but if so, and if the planters aren't 6 feet of concrete, that might work.

We urge the Commission to make this process easier for anyone with a credible complaint about noncompliance. Power companies have vast resources. The public needs more help from their government to help make sure that justice is served.

Declaration Under Penalty of Perjury

Each of us declares under penalty of perjury that he or she is informed and believes that each of the facts set forth herein is true and accurate.

Respectfully submitted,

Michelle Murphy and Bob Perkins