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**VIA EMAIL AND HAND DELIVERY**

Marc S. Pryor  
Compliance Project Manager  
California Energy Commission  
1516 9th Street, MS 15  
Sacramento, CA 95814

**Re: El Segundo Power II LLC's Reply to Comments on its Petition to Amend  
El Segundo Power Redevelopment Project, (00-AFC-014)**

Dear Mr. Pryor

The project owner, El Segundo Power II LLC, ("ESP") of the El Segundo Power Redevelopment Project, 00-AFC-014 ("ESPR") has received and reviewed the Energy Commission Staff's ("CEC Staff") Recommendation and the comments by the California Coastal Commission Staff ("Coastal Commission Staff") regarding ESP's Petition to Amend the ESPR Final Decision ("Decision"). Accordingly, ESP presents the following reply.

**I. SUMMARY OF THE PETITION AND COMMENTS THERETO**

On September 30, 2005, ESP filed a Petition to Amend Condition of Certification BIO-1 because significant changes in the project's viability have occurred since the December 23, 2004 approval of the Final Decision. Though ESP strongly urged the Commission to tie payment of funds required by BIO-1 to actual steps taken toward construction of ESPR, the Commission, *sua sponte*, required scheduled payments of funds to begin 30 days after the decision became final. Unfortunately, because no contracts for ESPR's capacity have been obtained, the viability of ESPR is now at risk. Requiring the project owner to begin payments at a time when funding

Oregon  
Washington  
California  
Utah  
Idaho



Marc S. Pryor  
November 1, 2005  
Page 2

has yet to be completed, forces the project owner to make decisions, which places completion of the project in question.

CEC Staff's Recommendation fails to recognize the potential risk in which it places the project by recommending denial of the Petition. More important, CEC Staff's Recommendation fails to establish any viable reason the Petition should not be approved; rather, it addresses only one issue, and in doing so, ignores recent CEC precedent. Further, the Recommendation is contradicting and fails to address the plain facts of the circumstances.

Additionally, Coastal Commission Staff Comments incorrectly characterize conditions at the existing power plant and, building on those mischaracterizations, opposes the Petition and even argues for termination of certification. Both the CEC Staff Recommendation and the California Coastal Commission Comments clearly do not recognize the gravity of the repercussions should the Commission deny this Petition.

## **II. CEC STAFF COMMENTS**

In short, CEC Staff recommends that the Commission deny the Petition because there has not been a sufficient change in circumstances as required by Commission Regulations. To the contrary, this statement is incorrect because:

- a. there has been a change in circumstances equivalent to the change in circumstances accepted for a recent petition to amend the Otay Mesa project;
- b. the plain and simple facts describe a substantial change in circumstances that threaten the viability of this important project; and,
- c. even if CEC Staff's argument were correct, ESP satisfied the alternative requirement to amend the Decision when it informed the Commission of the potential problems with the Decision.

Ultimately, CEC Staff's Recommendation ignores the important circumstances and dire consequences that will occur should the Commission deny ESP's Petition. Moreover, CEC Staff makes a thin, plainly incorrect legal argument why the Petition should be denied. Following CEC Staff's Recommendation is against the interests of the citizens of California and will further frustrate California's efforts to improve reliability and increase generating capacity.



Marc S. Pryor  
November 1, 2005  
Page 3

**A. There Has Been a Change in Circumstances in the ESPR Project.**

There has been a change in circumstances in the ESPR project equivalent to the change in circumstances accepted for a recent petition to amend the Otay Mesa project. For nearly a year, ESP has tried and failed to obtain commitments for the capacity of ESPR. This change in circumstances is strikingly identical to the change in circumstances in Otay Mesa wherein the Commission allowed changes to payment timing for lack of ability to continue the project. The Commission allowed and made such changes in the Otay Mesa project because it was the correct decision, just as it is here in ESPR.

**B. The Change in Circumstances is Significant Enough to Threaten the Viability of ESPR.**

ESPR is an important project that will provide much needed electricity to the vulnerable and threatened Los Angeles load center. CEC Staff claims that there has not been a sufficient change in circumstances to merit changes to the Decision. This argument ignores the plain fact that ESP has made a considerable effort to obtain contracts or commitments for the capacity of ESPR, yet has failed to do so. The changed circumstance is refusal of the interconnected load serving entity to contract for combined cycle generation in the absence of clear cost recovery pending CPUC action on AB 1576 and the potential that regulatory and structural characteristics of California electricity law and policy would allow the much needed capacity of ESPR to be contracted. That potential has been erased after nearly one year of trying to “sell” the output of ESPR. Despite the fact that California Policy and Forecasts recognize a severe problem with electricity supply and stability in Southern California, 660 megawatts of new, highly efficient natural gas-fired combined cycle technology electricity generation in the heart of the Los Angeles region load center have gone unclaimed. To ignore this fact, or call it insufficient, ignores a huge and well understood problem in California that many diligent regulators, legislators and the Governor are working hard to fix.

**C. Under the CEC’s Regulations, Change in Circumstances is Not Required to Amend a Decision.**

The CEC Staff argues that a change in circumstances is a mandatory, minimum requirement for any change to a decision. That assumption is incorrect. In fact, under the CEC’s regulations, a change in circumstances is not require to amend a decision *if the issue was raised during the certification proceeding*. CEC Staff cites subsection(a)(1) D(1) of Title 17 of the California Code of Regulations (hereinafter “Subsection D”) which states:



Marc S. Pryor  
November 1, 2005  
Page 4

If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted...

CEC Staff then goes on to explain why it believes that there has not been a sufficient change in circumstances. Subsection D, however, does not indicate that a change in circumstances is a minimum requirement. Rather, it only makes it a requirement if the decision modification is to be founded upon a change in circumstances. Further, subsection (a)(1)(C) (hereinafter "Subsection C") clearly states that a modification to a decision can be allowed based upon information known at the time of the proceeding, provided that such information was raised to the attention of the Commission:

If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time.

Subsection C clearly shows modifications can be made to a decision with no changes in circumstances, but instead upon circumstances and conditions as they existed at the time of the proceeding. Thus, the fundamental premise of CEC Staff's objection to the Petition is absolutely incorrect, as ESP raised concerns about the scheduling of payments required by BIO-1 on December 23, 2004, the date the Commission both approved the Decision and changed the payment schedule without prior notice to the project owner. (See Petition at pp. 7-8.) Petitioner reasonably believed at that time that the load serving entity would negotiate a suitable long term contract for the new project's output in good faith. However, subsequent events showed otherwise, pending further CPUC clarity on cost recovery and cost allocation.

### **III. COASTAL COMMISSION STAFF COMMENTS**

The Coastal Commission Staff Comments mischaracterize the law, facts, and ESPR's Decision. They, like the CEC Staff, also ignore the underlying compelling circumstances and disregard what is in the best interests of the citizens of California.

#### **A. Coastal Commission Staff Incorrectly Describes Existing Plant Conditions.**

The Coastal Commission Staff misinterprets information provided by ESP in the El Segundo Generating Station's ("ESGS") National Pollutant Discharge Elimination System renewal



Marc S. Pryor  
November 1, 2005  
Page 5

process. This misinterpretation concerns a pipe that draws seawater from cooling system #1 to be used to cool a bearing water system in Units 3 and 4. Coastal Commission Staff interprets this as meaning that the two cooling systems at ESGS are cross-connected and claims that such information was not revealed during the ESPR AFC proceeding. Moreover, Coastal Commission Staff claims that the ESPR AFC proceeding is so tainted that Certification should be withdrawn and the project owner fined. Simply stated, the Coastal Commission Staff is *wrong*. Coastal Commission Staff's understanding of the power plant and bearing water cross-connect line is seriously flawed. In fact, the line between the two systems is used exclusively for auxiliary cooling in a bearing cooling water system; thus, the two cooling systems are not cross-connected for steam condensation purposes, as Coastal Commission Staff mischaracterizes. Further, ESP did explain this system at numerous times during the AFC proceeding, including at the evidentiary hearings and in docketed information. Lastly, this matter has no bearing on the integrity or accuracy of the project Certification since it does not affect the CEQA baseline of the project. This is explained further in great detail in the attached rebuttal to the California Coastal Commission's false and inaccurate portrayal of the facts (Attachment 1).

**B. Coastal Commission Staff Incorrectly Describes the Nature of the Timing of BIO-1 Payments and Studies.**

Coastal Commission Staff suggests that there were actual findings in the ESPR Decision that BIO-1 studies were required prior to some certain date. This suggestion is wholly incorrect. BIO-1's purpose, timing and funding obligations shifted and changed from the time they were offered by ESP until, and even including, the very date on which the Commission approved the Decision. Further, there are no findings that the BIO-1 studies are compelled or necessary to prevent any project-related conditions. Instead, the Decision makes clear that the BIO-1 studies will be good for the Santa Monica Bay as a whole. There are absolutely no findings nor any analysis linking the commencement or completion of the studies to any date whatsoever. Additionally, the Commission never explained its reasons for choosing the dates set forth in BIO-1, though they appeared to choose the most immediate dates possible. ESP cannot make payments toward the studies for the project, which may not be built, without disregarding the interests of its shareholders. The Coastal Commission Staff ignores this fact and attempts to fabricate a situation wherein the Commission cannot change its decision as needed to further the interests of California and its citizens.



Marc S. Pryor  
November 1, 2005  
Page 6

#### IV. CONCLUSION

ESP's Petition seeks necessary changes to the Decision that are in the interests of the citizens of California. These changes will not harm the environment and, thus, the Petition should be approved immediately. The alternative, the loss of the ESPR project, would be a travesty and a tremendous disservice to the citizens of California.

Very truly yours,

  
John A. McKinsey

JAM/mws

## Attachment 1

### Detailed Responses to California Coastal Commission's Allegations



In the California Coastal Commission comments regarding El Segundo Power II LLC's ("ESP") Petition to Amend Condition of Certification BIO-1, the Coastal Commission inaccurately asserts that ESP made inconsistent statements in the AFC proceeding for the project. The Coastal Commission's allegations are completely incorrect and ESP believes they should be dismissed out of hand and not allowed to distract the Energy Commission from the subject at hand, which is the Petition to Amend Condition of Certification BIO-1.

The Coastal Commission's allegations and any perceived need to evaluate them whatsoever should be dismissed out of hand for two basic reasons:

- They represent a substantial ignorance and misunderstanding of the facts and evidence presented in the AFC and are easily refuted via a quick review of the documentation on the project;
- Regardless of the accuracy of the statements, they have no relevance to the integrity or validity of the Energy Commission's Decision for the project, as they do not change any of the underlying facts that provide the foundation to the Decision.

Even though these two basic reasons are sufficient to immediately dismiss the Coastal Commission's allegations, ESP feels compelled to provide responses to the three allegations included in the Coastal Commission's "Attachment 2 – Comments Regarding Inconsistencies Between the Project Owner's AFC Application and Testimony and Recent Disclosures to the Regional Board."

1. Coastal Commission Statement: "The design of the power plant's cooling systems is different than described in the AFC proceedings. It appears that the two systems are interconnected rather than separate."

ESP Response: The designs of the intake and outfall structures at El Segundo Generating Station ("ESGS") were correctly described in all aspects of the AFC and its proceedings. There are two separate intakes and two separate outfalls, one for Units 1 & 2 and one for Units 3 & 4, as properly described in all relevant documents to the proceeding. The only "connectivity" of these two systems is where auxiliary cooling water from Intake #1 can be pumped through a 21 inch pipe into heat exchangers that are used to cool various rotating equipment bearings throughout the Unit 3 & 4 power plant. This is the original plan configuration, installed when Units 3 & 4 were first built. It should be noted, however, that this pipe to the Unit 3 & 4 heat exchangers is not interconnected with the Unit 3 & 4 steam turbine condensers and cannot be used for cooling those condensers.

ESGS attempted to better describe this aspect of the facility cooling water system in its most recent NPDES permit renewal application, submitted to the Los Angeles

## Attachment 1

### Detailed Responses to California Coastal Commission's Allegations



Regional Water Quality Control Board ("Regional Water Board") on September 24, 2005.

Contrary to the statements of the Coastal Commission, this aspect of the cooling water system at ESGS was accurately described numerous times during the ESPR AFC proceeding. For example, during the evidentiary hearing on February 19, 2003, ESP testified that Intake #1 was currently operating even though the generating units had been shutdown; specifically stating: "But even more importantly is it's operated because **it's essential to the operation of the existing station units 3 and 4** (emphasis added) for various wastewater discharges that have to be circulated. And so we operate intake one every day at about 50 million gallons per day." {2/19/03 Transcript, Pages 214:14 – 218:8}

Additionally, on March 1, 2004, ESP refuted CEC staff's assertion that Intake #1 was not operating since it had surrendered its air permit and stated, "Both cooling systems are, in fact, operating." This was expanded upon on May 3, 2004, when ESP was explaining how a flow cap that is effective upon project certification would immediately and adversely affect the operability of Units 3 & 4 by explaining: "Moreover, Intake #1 continues to operate to support plant processes such as diluting sanitary wastes and providing auxiliary cooling for heat loads and thus would use significant portions of the flow cap volume." These three citations demonstrate that this small portion of cooling water from Intake #1 that can be used by Units 3 & 4 was properly explained prior to final certification of the project.

Regardless of whether or not this portion of the cooling water flow at ESGS was properly described in the AFC proceeding, the fact of the matter is it has no relevance to the adequacy or accuracy of the project certification whatsoever. All of the controversial portions of this matter were focused on "how much seawater" was used at the facility, not how it was utilized inside the power plant. The data supplied to describe intake flows came from monitoring reports submitted to the Regional Water Board and provided to the CEC as part of the AFC proceeding. Flow data from 1998 through 2002 was provided as part of the written testimony during the evidentiary hearings for the project. Later, data from 1996 and 1997 were also included in the record. All of the cooling water flow information is based on pump operating data at the intake structures. Pump operating time is used to calculate total flow at the facility.

The Energy Commission's final certification of the project used the 1996-2000 facility-wide intake flow volume information for the CEQA baseline of the project. The average annual total facility cooling water volume was then used as the facility cooling water flow cap in BIO-3 to demonstrate the project would have no increase in its historical use of cooling water and therefore no possibility of increased impacts. Since the relevant and important information in this baseline determination is the total facility cooling water flow, then how the cooling water is used inside the plant is



## Attachment 1

### Detailed Responses to California Coastal Commission's Allegations



irrelevant to this baseline. Therefore, there is no part of the project certification that merits any additional evaluation, as purported by Coastal Commission.

2. Coastal Commission Statement: “The reasons given for the amount of water being used at Intake #1 for the two non-functioning generators do not appear to be based on actual requirements or on available data.”

ESP Response: Testimony provided at the evidentiary hearings in February 2003 were, and remain, accurate regarding the volume of cooling water being circulated through Intake #1 at ESGS. There are four pumps associated with Intake #1, each rated at 36,000 gallons per minute, or approximately 51.8 million gallons per day (MGD), one of which typically remains in operation every day. There are days when the pump(s) are shutdown for part of the day, or the entire day, depending on the circumstances at hand. On these days the NPDES monitoring reports would show less than 51.8 MGD of volume, or even zero in some cases. Various reasons that may require pump shutdown include, repair or maintenance activities on the pumps, repair or maintenance activities on other parts of the cooling water system, repair or maintenance activities on the sanitary waste treatment system, equipment malfunctions, among many other reasons. Some of these pump shutdown periods are short while others may be extended over multiple days.

One of the central questions during the AFC proceeding was why is at least a 51.8 MGD of seawater pumping required for operating and maintaining the system. The reasons are exactly the same now as they were then, and include:

- The primary function of the Intake #1 pump is to maintain continuous discharge of treated sanitary waste streams from waste treatment plant #1 located on the northern side (Units 1 & 2 side) of ESGS. The once flow through cooling water system is an integral part of the sanitary waste treatment system and requires circulation of sufficient continuous cooling water flow to avoid excessive fouling of the cooling system, and to properly discharge the treated sanitary wastes. Effluent limitations for the treated sanitary waste streams in the NPDES permit were calculated assuming cooling water flow through Intake #1. Not maintaining this flow can result in noncompliance with NPDES permit requirements and buildup of treated sanitary wastes in the cooling system such that water quality is significantly degraded and may adversely affect the environment;
- For the service air compressors in use at Units 1 & 2 that utilize bearing cooling water from the Units 1 & 2 bearing cooling water heat exchangers, which are cooled from the Units 1 & 2 cooling water system. These service air compressors are critical to the operation of the entire plant by supplying high volumes of compressed air used for various purposes throughout the plant and at Units 3 and 4;

## Attachment 1

### Detailed Responses to California Coastal Commission's Allegations



- For the bearing cooling water heat exchangers on Units 3 & 4 that draw additional cooling water from the Units 1 & 2 cooling water system during maintenance activities and during peak operational periods when the heat transfer is poor across the Units 3 & 4 bearing cooling water heat exchangers that may be caused by marine fouling (shell buildup). The cooling water utilized during these peak periods is drawn through a 21-inch pipe between Units 1 & 2 and Units 3 & 4. This pipe connection is considered a backup and supplement to the Units 3 & 4 cooling water system and is a critical component to the operation of Units 3 & 4;
- To pump storm water discharges from various locations at the facility. The Intake #1 cooling water circulation is the means by which the storm water is conveyed to the outfall.

ESP is surprised by the Coastal Commission's assertion that the level of, and reasons for, operation of Intake #1 were not properly characterized during the AFC proceeding. In fact, there is one simple statement located in the Commission Decision document that proves the Coastal Commission completely wrong. On pages 49 and 50, the document states "Applicant testified that it continues to operate the cooling water system at Intake #1 at approximately 50 MGD, including the intake and outfall, so that it does not become fouled or clogged, as well as to maintain its NPDES permit. There are, however, intermittent days when the cooling water system does not operate for maintenance or other reasons." This description matches the above described continued uses of Intake #1, which are also the same descriptions provided to the Regional Water Board as part of the NPDES permit renewal process. So obviously there are no contradictions between the NPDES and AFC proceedings and certainly this matter creates no reason to revoke or re-open this project certification as suggested by the Coastal Commission.

3. Coastal Commission Statement: "The amount of water being used at Intake #1 (and therefore the associated effects on marine biology) is substantially higher than was described during the AFC process."

ESP Response: The above responses describe the typical existing uses of Intake #1, however, on some occasions more than one pump may be necessary due to unusual circumstances. For example, beginning in August 2003 and continuing frequently, but not every day, through approximately September 2004, ESGS had to operate more than one circulating water pump at Intake #1 in order to maintain a clean circulating system. This is due to an unusual formation of a foam-like substance at the outfall. The foam became a significant nuisance at the plant and adversely affected the ability to take proper discharge samples at Outfall #1. ESGS circulated higher flows of seawater at Intake #1 as a measure to minimize foam buildup.

Due to the inability to perform heat treatments on Intake #1, there has been an extreme amount of mussel growth inside the Intake #1 structure and conduit. In a

## Attachment 1

### Detailed Responses to California Coastal Commission's Allegations



December 2004 diver inspection report, the diver noted that the intake riser at Intake #1 had heavy mussel growth such that some areas had only 6-8 inches of opening at the riser for water to pass through. Although it has not been proven, it is suspected that this mussel growth and the complete natural life cycles of the mussels in the intake conduits are creating this foam-like substance at Outfall #1. Representatives of the CA Fish & Game Department, Regional Water Board, and the Santa Monica Bay Restoration Commission were all consulted as to the potential causes of the foam. ESGS also provided numerous reports to the Regional Water Board regarding this situation. While the foam problem has not gone away, ESGS has been able to minimize the need to utilize more than one circulating pump at Intake #1 during more recent months.

Lastly, the recent and current intake volumes at Intake #1 and Intake #2 are irrelevant to the Energy Commission's Decision for the ESPR project. The Energy Commission states in the section titled "Determining an Appropriate Environmental Baseline" on pages 48-49 of the Decision, that the appropriate CEQA baseline for the project is the 1996-2000 facility flow average even though there was additional and more recent flow data available at that time (2001-2002 for instance). Therefore, how the intakes are currently operated and how much water is pumped cannot, and does not, change the project environmental baseline and hence does not necessitate any reason to re-open the project Decision.