



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

California Energy Commission

DOCKETED
12-CAI-05

TN # 69669

FEB 25 2013

IN THE MATTER OF
**COMPLAINT AGAINST AND REQUEST
FOR INVESTIGATION OF EL SEGUNDO
POWER REDEVELOPMENT PROJECT**

Docket No. 12-CAI-05

ORDER DISMISSING COMPLAINT OF MICHAEL DOLEN WITHOUT PREJUDICE

Introduction

On November 26, 2012 Michael Dolen, a resident of Manhattan Beach, California, filed a complaint (the Complaint) pursuant to Title 20, California Code of Regulations, section 1237. The Complaint alleges that the project owner, El Segundo Energy Center, LLC (ESEC, LLC), has failed to comply with certain conditions of certification contained in the visual resources section of the Commission Decision. Specifically, Dolen alleges that misrepresentations by ESEC, LLC misled the Manhattan Beach community concerning the nature and extent of visual impacts to the oceanfront landscape, and that ESEC, LLC is constructing a new beachfront parking lot in connection with the project that is not part of the project approved by the Commission Decision.

The Complaint concludes by requesting that the Commission require the project owner to provide a visual simulation with a vantage point from The Strand and 44th Street, cease construction of the beachfront parking lot, and work jointly with the city of Manhattan Beach to create and execute a plan for visually acceptable camouflage.

Staff reviewed the Complaint and has recommended that the Complaint be dismissed. This recommendation is based upon Staff's conclusion that the matters alleged in the Complaint will be addressed by ESEC, LLC during the construction process.

The Chair has reviewed the Complaint, Staff's response, and comments submitted after issuance of the staff response, and orders herein that the Complaint be dismissed based upon Staff's recommendations. However, this dismissal is without prejudice to Dolen's ability to bring these matters to the Commission's attention again in the future should they not be satisfactorily resolved during the construction process.

Procedural Background

Section 1237 permits any person to file a complaint with the Commission alleging noncompliance with a commission decision. The filing of the complaint triggers an investigation by commission staff of the alleged noncompliance. Upon completion of the

investigation, staff prepares a report setting forth its recommendations. A committee of two commissioners or, if none has been assigned the Chair, reviews the complaint, the staff report, and any comments submitted by interested persons, and determines whether to dismiss the complaint based upon its insufficiency or lack of merit, issue a written decision presenting its findings, conclusions or orders, or conduct hearings to further investigate the matter.

It is worth noting at this point that a complaint filed on July 3, 2012 by Michelle Murphy and Robert Perkins (the Murphy-Perkins Complaint, 12-CAI-03) concerning visual impacts resulted in an agreement between ESEC, LLC and the complainants. Pursuant to that agreement, ESEC, LLC submitted, on December 7, 2012, draft drawings revising grading and landscape plans in the same areas of the project that are the subject of the Dolen Complaint. Refinement of these drawings is ongoing and is subject to Energy Commission staff approval. Thus, at least some of the plans and designs referred to in the Dolen Complaint have changed since its filing in November 2012, prior to issuance of the draft drawings.

Discussion

Complaint No.1 - From the Application for Certification through present, NRG¹ used false pretenses to mislead and deceive the Manhattan Beach community. As a result, the community was unaware of the harmful changes which its oceanfront landscape will soon endure.

Complaint No. 1 is based primarily upon visual simulations of the project provided during the review of the Application for Certification. Dolen claims that the visual simulations were misleading both because they are taken from vantage points that do not fairly represent the views from nearby residences such as his, and also because landscape plantings depicted in the simulations will not actually achieve the level of screening shown.

Staff states that the vantage points were selected because they represent the views of both beachgoers and occupants of nearby residences. Staff further finds that the landscaping design represents an effort to provide adequate screening of project structures without blocking surf views from homes and that the landscaping is necessarily a compromise between these two competing goals. Staff concludes that the visual depictions are not misleading and that the landscape plantings should do a reasonable job of screening views of project facilities while preserving residents' ocean views. Furthermore, revision of grading and landscaping plans pursuant to the Murphy-Perkins Complaint is ongoing. There is no evidence at this point that this work will not result in landscaping and screening that Mr. Dolen will find acceptable. The Chair encourages Mr. Dolen to work with Ms. Laurie Jester of the city of Manhattan Beach staff, who is participating in the process for implementing the agreement reached on the Murphy-Perkins Complaint (12-CAI-03).

¹ Throughout the Complaint, Dolen refers to the project owner as NRG. According to the records of the Commission, the current project owner is El Segundo Energy Center, LLC.

Complaint No. 2 - NRG is constructing a new beachfront parking lot which was not visually depicted nor adequately disclosed in the Application for Certification.

Complaint No. 2 stems from Dolen's concern that an area at the south end of the project site, currently occupied by an abandoned storage tank which is slated for removal, will be turned into a parking lot in violation of the requirements of the Commission Decision.

According to Staff, the Commission Decision sets forth a series of steps for reclaiming the land where the tank currently sits. Staff states that at this point there is no reason to believe that there will be future noncompliance with these steps. Staff further points out that the Commission Decision describes certain permitted uses for this area of the project site, among which is overflow parking during maintenance operations. Staff has confirmed with ESEC, LLC that this is how the area will be used in the future.

Conclusion and Order

The Chair agrees with Staff that there is insufficient evidence of noncompliance at this point; in that sense the Complaint may be premature. Some of the matters alleged in the Complaint are the subject of ongoing design work and discussion. Staff states that the matters alleged in the Complaint will be the subject of ongoing Staff scrutiny during the construction and compliance phases of the project.

However, that is not to say that the matters alleged in the Complaint may not, in the future, be the subject of actual noncompliance, i.e. verifiable violations of the conditions of the Commission Decision. For that reason, the Complaint is dismissed without prejudice to Mr. Dolen's right to bring these matters to the attention of the Commission in the future.

Therefore, the Chair issues the following order:

For the reasons set forth hereinabove, the Complaint is ordered DISMISSED WITHOUT PREJUDICE pursuant to Title 20, California Code of Regulations, section 1237 (d)(2).

If either the project owner or the complainant is not satisfied with the decision of the Chair, they may appeal to the full Commission within 14 days after issuance of this Order.

Dated: February 25, 2013 at Sacramento, California.

Original Signed By:

Robert B. Weisenmiller, Chair
California Energy Commission



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POWER REDEVELOPMENT PROJECT*

Docket No. 12-CAI-05
PROOF OF SERVICE
(EST. 2/25/2013)

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**OTHER ENERGY COMMISSION
PARTICIPANTS (LISTED FOR
CONVENIENCE ONLY):**

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[No Committee has been
assigned to conduct proceedings
regarding the Petition to Amend]

Raoul Renaud
Hearing Adviser

DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on February 25, 2013, I served and filed copies of the attached ORDER DISMISSING COMPLAINT OF MICHAEL DOLEN WITHOUT PREJUDICE, dated February 25, 2013. This document is accompanied by this Proof of Service.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, as appropriate, in the following manner:

(Check one)

For service to all other parties and filing with the Docket Unit at the Energy Commission:

 X I e-mailed the document to all e-mail addresses on the Service List above and personally delivered it or deposited it in the US mail with first class postage to those parties noted above as "hard copy required"; **OR**

 Instead of e-mailing the document, I personally delivered it or deposited it in the US mail with first class postage to all of the persons on the Service List for whom a mailing address is given.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am over the age of 18 years.

Dated: February 25, 2013

Original Signed By:

RoseMary Avalos
Hearing Office