

STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of: ) Docket No. 00-AFC-14  
)  
Application for Certification )  
of the **EL SEGUNDO POWER** ) **STAFF’S PMPD COMMENTS**  
**REDEVELOPMENT PROJECT** )  
)  
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The California Energy Commission (CEC) Staff disagrees with the findings and recommendations contained in the “Biological Resources” section of the Presiding Member’s Proposed Decision (PMPD) in the El Segundo siting case, issued on January 30, 2004. Staff believes changes to the PMPD are essential to correct legal and factual errors, and to adequately protect the biological resources of Santa Monica Bay. The PMPD also omits numerous Conditions of Certification that were agreed to by stipulation of the parties and are essential to the legal integrity and enforceability of the document.

Staff’s comments will initially discuss the critical legal, factual and policy concerns we have regarding the “Biological Resources” section of the PMPD (pp. 39-72). Thereafter, we will identify and briefly discuss the many stipulated Conditions of Certification that were omitted from the PMPD.

**I. THE “BIOLOGICAL RESOURCES” SECTION OF THE PMPD NEEDS TO BE REVISED.**

**A. Summary of the Record and the PMPD Regarding “Biological Resource” Issues**

The facts concerning the “biological resource” impacts of the proposed El Segundo Redevelopment Project are largely undisputed in this case, and include the following:

## 1. The Environmental Setting Is Impaired and The Project's Actual Impacts Are Severe

Although the PMPD authorizes the Applicant to withdraw 139 billion gallons of seawater from Santa Monica Bay *each year* for “once-through” cooling of its project, it does not mention any of the following undisputed facts in this case. Santa Monica Bay is a severely ecologically degraded natural resource that is currently listed as an “impaired water body” under the Clean Water Act, and it was one of the first water bodies listed under the National Estuary Program because it was and remains seriously “threatened by development, pollution or overuse.” A wide range of fish species and related marine organisms are in severe and continuing decline throughout the region. (See Staff's Opening Brief at pp. 2-4 for documentation).

The enormous volume of water the Applicant intends to withdraw from Santa Monica Bay, and the resulting “entrainment” impacts of the proposed “once-through” cooling water system, would kill *trillions* of marine plankton, *billions* of fish larvae, and impinge *thousands* of adult fish, including some of the most degraded species in Santa Monica Bay, *each year*. (See Staff's Opening Brief at pp. 4-6 for documentation).

The proposed El Segundo power project, in conjunction with the nearby Scattergood and Redondo power plants, would kill more than 13 per cent of all the marine larvae in Santa Monica Bay *each year*. This would cause a significant adverse cumulative impact to the marine resources in the region. (See Staff's Opening Brief at pp. 9-11 for detailed documentation).

## 2. Staff's Recommended Conditions of Certification Will Address These Adverse Impacts

Based on these facts and the legal requirements of the California Environmental Quality Act (CEQA), the California Coastal Act, and the Warren Alquist Act, the CEC Staff has testified that this project should be licensed only if it either (a) “avoids” the project's severe marine resource impacts by using treated sewage water from the nearby Hyperion Sewage Treatment Plant in lieu of withdrawing sea water directly from Santa Monica Bay; or (b) “fully mitigates” the serious adverse impacts of the project by what Staff calls “*the three-legged stool*” option, namely (1) comply with an *annual* cap on total project withdrawals from Santa Monica Bay based on existing withdrawal levels, and a related cap *each month* to insure that spawning fish are not adversely impacted; (2) complete a scientifically reliable entrainment/impingement study prior to operation in order to accurately document and disclose what needs to be done *vis a vis* this project to “restore and enhance” Santa Monica Bay as required by the California Coastal Act; *and* (3) promptly place such funds as the Applicant can “feasibly” afford into a trust account to ensure that enhancement and restoration efforts commensurate with the findings of a reliable entrainment/impingement study will, in fact, occur as the Warren Alquist Act and California Coastal Act require. (See Staff's Opening Brief at pp. 11-21).

### 3. All Agencies and Key Intervenors Support Staff's Recommendations

Similar or identical licensing requirements have been recommended by each of the major natural resource agencies participating in this case, including the California Coastal Commission, the California Department of Fish and Game, and the National Marine Fisheries Service. In addition, virtually every Intervenor in this proceeding has supported these or similar recommendations, including the Santa Monica Baykeepers organization, the Heal the Bay organization, the adjacent City of Manhattan Beach, and the nearby citizen-Intervenors Murphy/Perkins. In fact, no agency, no organization, nor any individual intervenor has opposed Staff's recommendations in this case, with the exception of the Applicant.

### 4. The Applicant's Position & Recommendations Are Not Supported By Any Other Party

The Applicant initially took the position that it had no obligation to avoid or mitigate in any way the marine resource impacts of its proposed project for two reasons, namely: (1) the proposed project would not exceed its existing NPDES license limits, though the facility has been operating far below those limits for years; and (2) a number of studies done many years ago, at other locations or for entirely different purposes, suggested that this project would not cause any significant adverse marine resource impacts.

The Applicant's "reliance on existing permit levels" argument is contrary to the law in California (see, e.g., Staff's Reply Brief at pp. 3-5), and the PMPD does not expressly cite this argument as a legal basis for its conclusions and recommendations in this case. Similarly, the Applicant's "reliance on outdated and unreliable studies" has been rejected by every one of the marine biologists in this case, with the exception of the Applicant's consultant. (The reasons for this rejection are thoroughly discussed and documented in Staff's Opening Brief at pp. 7-11). Again, the PMPD does not cite the Applicant's studies to justify its conclusions and recommendations in this case.

Finally, shortly before commencement of the evidentiary hearings in this proceeding, the Applicant revised its position and offered to do three things, namely (1) comply with an "annual cap" that is below its current NPDES permit levels (which will expire about a year from now), but is substantially greater than the sea water volumes actually being withdrawn at the site at this time; (2) conduct a "feasibility study" to determine whether a "Gunderboom" or similar physical barrier to reduce once-through cooling water impacts could be deployed at the site; and (3) give one million dollars to the Santa Monica Bay Restoration Commission to use as it wishes in that region. At the evidentiary hearings, the Applicant continued to insist that it has no legal or scientific obligation to do any of these things, but is prepared to stand by these three conditions if the Committee/Commission so orders. None of the other parties to this proceeding found the Applicant's revised proposals legally or factually adequate in any way.

## 5. The PMPD Adopts The Applicant's Position Virtually Verbatim

The PMPD rejects all of the “Biological Resource” recommendations proposed by the Staff and the various resource-related agencies (i.e. the California Coastal Commission, the Department of Fish and Game, the National Marine Fisheries Service), as well as the additional recommendations of Intervenors such as the Santa Monica Baykeepers and Heal The Bay. Instead, the PMPD adopts the Applicant's proposed conditions on this issue virtually verbatim, finding that nothing more is needed as a matter of policy, fact or law.<sup>1</sup>

### **B. The PMPD Diverges From Previous Energy Commission Decisions**

Before discussing the specific legal and factual reasons the PMPD should not be approved as currently written, it is important to note that the PMPD embraces a set of important policies that are inconsistent with prior Commission decisions in the following areas:

1. Reliable Science: The PMPD proposes that the Energy Commission approve this project without having ever obtained, reviewed, or even required any recent, scientifically reliable evaluation of the direct adverse entrainment/impingement impacts this project will cause. The Commission's approval of a project lacking reliable scientific data has never occurred in any other case involving once-through cooling at coastal sites of which Staff is aware. Even the Commission's “Huntington Beach” decision, which was rendered under the Governor's emergency powers during the energy crisis in 2000-2001, required that a scientifically reliable entrainment/impingement study be performed at the site as a condition of certification.

2. Adequate Mitigation: The PMPD approves this project without requiring any onsite or offsite “mitigation” measures or alternatives. Instead, the decision (1) adopts the Applicant's proposed volumetric entrainment “caps” which are well above the existing volumes actually being withdrawn at the site; (2) approves the Applicant's proposed study of the “feasibility” of a Gunderboom-like barrier despite the fact that this technology has never been deployed in open ocean waters like Santa Monica Bay, and has a “spotty” track-record, at best, in other settings; and (3) approves the Applicant's proposed payment of one million dollars to the Santa Monica Bay Restoration Commission, notwithstanding the fact that this “enhancement” amount has not met the “maximum feasible” legal requirement of the Coastal Act and is far below the mitigation funds required or expended by Applicants in other recent power plant siting cases.

3. Recommendations of Other Agencies: Contrary to the “due deference” requirement of the Commission's own siting regulations (Title 20, California Code of Regulations

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<sup>1</sup> The PMPD does require the physical barrier to be deployed if found feasible (based on Applicant's study) by the Los Angeles Regional Water Quality Control Board. However, the Energy Commission would have no role at all in this feasibility study and deployment determination. (See PMPD at pp. 60 and 70).

(CCR), Section 1714.5), the PMPD appears to give no deference to the unanimous concerns and recommendations of the various resource agencies who actively participated in this case, including the California Coastal Commission, the Department of Fish and Game and the National Marine Fisheries Service.<sup>2</sup>

The PMPD does give what it describes as “appropriate recognition” to a single sentence in the NPDES permit issued by the Los Angeles Regional Water Quality Control Board (LARWQCB) in 2000 for the existing intakes at the El Segundo facility. That sentence states that a 1982 entrainment study (conducted at a location approximately 50 miles from the El Segundo site) “demonstrated that the ecological impacts of the intake structure were of an environmentally acceptable order.” (See PMPD at pp. 50-52). However, the PMPD does not mention several other undisputed facts in this regard, namely: (a) the LARWQCB has acknowledged in writing that it does not have and never has collected, possessed or analyzed any reliable scientific entrainment data at the actual El Segundo site; (b) the LARWQCB has never supported the Applicant’s project in this CEC proceeding, either in writing or through any actual witnesses at the evidentiary hearings; and (c) the LARWQCB has expressly informed the Energy Commission in writing that it is “fully aware” of the serious concerns raised by the Staff, the Coastal Commission, the Department of Fish and Game and the National Marine Fisheries Service regarding the proposed project’s adverse once-through cooling impacts, and “has no objection if the CEC elects to make additional factual and legal determinations on [these biological resource] issues pursuant to [the Energy Commission’s] responsibilities under the California Environmental Quality Act (CEQA) and the Warren Alquist Act.” (See Staff’s Opening Brief at p. 15).

#### 4. Reliance On Speculative Future Actions Of Other Regulatory Agencies

The PMPD refers to and appears to take comfort from the prospect that the federal Environmental Protection Agency (EPA) may adopt Clean Water Act rules concerning once-through cooling systems at existing power plants (the so-called 316(b) rules), as well as from speculative future actions which the LARWQCB may or may not take to address the entrainment/impingement impacts of the proposed project when the Applicant’s NPDES permits for the facility are reviewed sometime in mid 2005. (See, e.g., PMPD at p. 51). As Staff expressly noted when briefing the Committee on this matter, “it would be completely contrary to the requirements of California law for the CEC to grant a license for this project based on such speculative and uncertain future actions of a regulatory agency over which the Commission has no control whatsoever.” *Sundstrom v. County of Mendocino* (1988), 202 Cal.App.3<sup>rd</sup> 296, at pp.306-307, 248 Cal. Rptr. 352, at pp. 358-359. Moreover, the Commission does not now and never has had any policy of granting a permit based on such speculative future circumstances. (See Staff’s Reply Brief at pp. 7-8).

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<sup>2</sup> The PMPD refers to the Department of Fish and Game and the National Marine Fisheries Service simply as “other agencies” and provides no detailed description of the numerous written comments, recommendations and testimony provided by these agencies. (See PMPD at pp. 43 and 45).

### C. The PMPD Contains Errors That Must Be Corrected

The PMPD approves this project based on certain erroneous facts and clear violations of the legal requirements in the Warren Alquist Act pertaining to CEQA and the California Coastal Act.

#### 1. The PMPD Does Not Conform with CEQA<sup>3</sup>

##### (a) *The Annual “Baseline” Adopted In The PMPD Does Not Comply With CEQA*

Staff has addressed the CEQA “baseline” issue in detail in its Opening Brief (pp. 11-15) and its Reply Brief (pp. 3-5), and we will not repeat those extensive materials in these Comments. However, in addressing the PMPD’s treatment of the project’s compliance with CEQA, it is important to recognize that under the provisions of CEQA the impacts of a proposed project are to be evaluated in comparison with certain “baseline” conditions in existence prior to the project’s approval. The CEQA Guidelines expressly state that the “*physical environmental conditions . . . as they exist at the time [the AFC is filed] or . . . the environmental analysis is commenced . . . will normally constitute the baseline physical conditions* by which a lead agency determines whether an impact is significant.” Title 14, CCR, Section 15125(a).<sup>4</sup>

In this case, the PMPD has chosen to adopt an annual once-through cooling water “baseline” level that reflects *neither* the five-year average physical conditions that existed at the time the El Segundo AFC was filed in December 2000, *nor* the physical conditions that actually exist today (and also existed, in fact, at the time of the evidentiary hearings in February 2003). Instead, the PMPD adopts an unprecedented average annual “baseline” for this project computed by *selectively averaging the three years immediately prior to the filing of the AFC (namely 1998, 1999 and 2000) with the two years immediately thereafter (namely 2001 and 2002)*. (PMPD at pp. 46-47)

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<sup>3</sup> In a power plant siting case such as this one, the CEC serves as the “lead agency” responsible for carrying out the policies and legal requirements of the California Environmental Quality Act (CEQA). See Public Resources Code Section 25519(c). As used herein, the phrase “requirements of CEQA” refers to the Energy Commission’s entire CEQA-certified regulatory program, referenced in Public Resources Code Section 25541.5, including the relevant provisions of the Warren-Alquist Act and all CEQA-related Commission regulations. See, e.g., Title 20, California Code of Regulations, Section 1755(c) and (d).

<sup>4</sup> On several occasions the PMPD incorrectly states that Staff has argued the baseline is “set” at the time the AFC is filed and “must be the pre-AFC filing flows.” (See, e.g., PMPD at pp. 46 and 47). Staff has said no such thing. An accurate reading of Staff’s Opening Brief (pp. 11-15) and Reply Brief (pp. 3-5) would reveal that Staff simply noted that the CEQA Guidelines state that the baseline is “normally” determined by the physical conditions at the time the AFC is filed. In its Opening Brief (at p. 12) Staff emphasized that “nothing in the CEQA statutes, guidelines or case law requires decision makers to ignore fundamental changes in the facts and/or the law that occur while the proposed project is still under review. To do so would be inconsistent with both the ‘full disclosure’ and the ‘rational decision making’ policies which CEQA seeks to promote.”

By adopting this baseline averaging period, the PMPD manages to include the atypically high operating conditions that existed during the peak of the “electricity deregulation” crisis in 2000-2001 (when the El Segundo facilities were being utilized at levels far above either average past or average present conditions), while it excludes the fact that as of January 1, 2003, prior to the evidentiary hearings, the air quality permits for Generating Units 1 and 2 were completely terminated, these units were totally shut down, and the actual withdrawal of sea water for once-through cooling of these units became and remains “zero.” (See Staff’s Opening Brief at pp. 12-13, including foot note #5).

Having rejected both the traditional baseline precedents of the Energy Commission (which normally uses a five-year averaging period immediately preceding the filing of the AFC as the proper baseline for once-through cooling impacts), and the “zero” baseline conditions which actually exist as a matter of law and fact in this case today, the PMPD then dismisses “as a matter of law” all CEQA-related concerns about the environmental impacts of the project’s once-through cooling system by finding that the Applicant’s “annual flow cap” for the project will not exceed baseline conditions as the PMPD has interpreted them to be. (PMPD at p. 50). Using this same logic, the PMPD goes on to conclude that there also are no “cumulative” project impacts above baseline (PMPD at p. 69), and hence no “alternatives” nor “mitigation” are needed for CEQA purposes in this case. (See PMPD at pp. 53 and 68).

Staff believes that the PMPD’s treatment of the cooling water “baseline” issue in this case does not comply with the requirements of CEQA for several reasons, including the following:

First, the courts and the CEQA Guidelines expressly require that the provisions of CEQA “be interpreted in such manner as to *afford the fullest possible protection to the environment* within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3<sup>rd</sup> 241 and Title 14, CCR, Section 15003). The PMPD has done just the opposite, interpreting CEQA in a factually limited and legally restrictive manner that would provide the least possible protection to the environment in this case.

Second, the CEQA Guidelines state that the physical environment in existence at the time the [AFC] is filed “will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (Title 14, CCR, Section 15125(a)). Applying this guideline to the El Segundo case reveals that the PMPD would allow the project to withdraw approximately 12 billion additional gallons of cooling water from Santa Monica Bay each year, which is *at least 10 per cent above the conditions that existed when the AFC was filed in December 2000*. (See Staff’s Opening Brief at p. 13). The PMPD has chosen to ignore the “normal” baseline conditions which CEQA requires, and has chosen to adopt a less environmentally protective baseline instead.

Third, CEQA is intended to “inform” the public through a “good faith effort at full disclosure” about the actual environmental impacts of a proposed project. (Title 14,

CCR, Sections 15003(c) and (i)). In this case it is an undisputed fact that this project would, in fact, increase entrainment volumes and related adverse marine resource impacts *by approximately 36 per cent above the levels that now exist* (and have existed since Units 1 and 2 were legally and factually shut down on January 1, 2003). (See Staff's Opening Brief at pp. 12-13). The PMPD does not mention this fact but instead attempts to dismiss the issue by inaccurately alleging that Staff delayed the schedule thereby improperly creating a "zero baseline" for these existing El Segundo facilities. (PMPD at p. 48). Contrary to what the PMPD incorrectly asserts, the formal "Status Reports" filed throughout this case reveal that the extended delays in this proceeding were caused by the Applicant's failure to provide numerous items having nothing to do with "Biological Resource" issues, and the unprecedented 11 month delay in issuing this PMPD after the close of evidentiary hearings in February 2003.<sup>5</sup>

Fourth, instead of adopting the appropriate "zero baseline" for cooling water consumption at Units 1 and 2 (as it factually and legally exists at the site today), the PMPD embraces an atypical 5 year operating period which encompasses the very peak of the "energy crisis" in 2000-2001. While the PMPD states that its chosen baseline is "more reflective of the existing merchant market" that has existed since the deregulated electricity market actually commenced operating in 1998 (PMPD at p. 47), it does not address or acknowledge the undisputed fact that the specific years it has selected are not indicative of the conditions which physically, factually and legally exist at the project site today under that very same "merchant market."

Finally, the PMPD repeatedly emphasizes that the Applicant's proposed annual flow cap, which the PMPD now adopts as its own, "represent a 37% decrease from [its current NPDES] permitted levels." (See, e.g., PMPD at pp. 50 and 52). However, as Staff's Reply Brief documents in detail, the courts have made it clear that existing permit levels constitute an *inappropriate* legal basis for determining whether projects such as this one will comply with CEQA or not. (See Staff's Reply Brief at pp. 3-5).

For all of these reasons, the Staff urges the Committee/Commission to reject the annual baseline of 139 billion gallons per year recommended by the Applicant and contained in the PMPD. Instead, for the reasons discussed in Staff's Opening Brief (at pp. 11-13), we urge the Committee/Commission to adopt the proper annual baseline of 101.533 billion gallons per year for this project.<sup>6</sup>

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<sup>5</sup> For an accurate description of the many delaying factors in this case having nothing to do with either Staff or biological resource issues, see El Segundo Status Report #1 (October 17, 2001), Status Report #2 (January 15, 2002), Status Report #3 (April 8, 2002), Status Report #4 (May 31, 2002), Status Report #5 (July 9, 2002), the Committee's Revised Schedule Order (July 22, 2002), the Prehearing Conference Transcript (November 7, 2002), and the Prehearing Conference Transcript (January 7, 2003). Evidentiary hearings were completed on February 19, 2003, but the PMPD was not issued until January 30, 2004.

<sup>6</sup> As documented and explained in Staff's Opening Brief, the recommended annual cap of 101.533 billion gallons consists of the "zero baseline" cooling water now being withdrawn at Intake #1, plus the five year annual average withdrawn by Intake #2 at the time the AFC was filed in December 2000. (See Staff's Opening Brief at pp. 12-13).

*(b) The Limited “Monthly Cap” Adopted In The PMPD Does Not Comply With CEQA*

In prehearing workshops and Staff’s written testimony, leading marine biologists in California repeatedly emphasized that an “annual cooling water cap” *alone* would not ensure that existing conditions at the site are maintained, because *an annual cap would not prevent the Applicant from dramatically increasing its intake volumes at the very time(s) that marine organisms are actually spawning or otherwise reproducing in Santa Monica Bay*. Accordingly, since it is undisputed that marine organisms reproduce *every month* of the year in Santa Monica Bay, Staff recommended that a monthly cap be imposed for *every month of the year* to ensure that the project will not be operated in a manner which could *increase* the adverse impacts to these marine organisms under CEQA. (See Staff’s Opening Brief at pp. 13-14).

Shortly before the evidentiary hearings began, the Applicant proposed a *monthly* cap applicable only to the months of *February, March and April*, and the PMPD has now adopted that limited monthly cap in this case. The PMPD cites no substantial evidence to explain why it is rejecting the monthly volumetric caps proposed by leading marine biologists in this country, despite the undisputed evidence that marine organisms spawn in Santa Monica Bay *every month of the year*, and thus will not be protected by an “annual cap” or a “seasonal cap” limited to just February, March and April (as the Applicant has proposed and the PMPD now adopts). Instead, the PMPD distorts the evidentiary record by suggesting that Staff’s main witness on this issue, Dr. Greg Cailliet, did not really mean to embrace the monthly caps he testified in support of, but was merely coached to this conclusion by Staff Counsel in this matter. (See PMPD at pp. 48-50).

This suggestion in the PMPD is without merit given a fair and complete reading of the entire record in this case. It is important for the Committee/Commission to recognize that in Staff’s Written Testimony on this subject, which was filed well in advance of the evidentiary hearings, Dr. Cailliet and his colleagues in marine biology clearly and repeatedly stated that monthly caps for *each month* of the year are the minimum that is needed to preserve the existing marine resource conditions at the site (See Staff’s Written Direct Testimony, January 22, 2003, at pp. 7-9 and Staff’s Written Response Testimony, February 10, 2003, at p. 27).

Dr. Cailliet confirmed this opinion with Staff Counsel immediately prior to the evidentiary hearings, but then simply misunderstood what Staff Counsel was asking about when the subject initially came up on the stand. Because of this clear misunderstanding, Staff Counsel chose to repeat the question several times, but Dr. Cailliet remained confused about what was being asked. However, following a short break, Dr. Cailliet clearly and unequivocally informed the Committee *under oath* that, in fact, he “did not understand [the question] when [Staff Counsel] first asked” about this subject, and it was indeed his professional opinion that caps were needed *every month* of the year because it is undisputed that fish spawn in Santa Monica Bay year round. (See RT 2/18/03, Dr. Cailliet, at pp. 154-155 and 179-189; and Staff Exhibits #18 and #36).

If the Committee/Commission desires, Staff can make Dr. Cailliet available again, either by declaration or by live sworn testimony, to confirm his expert opinion about the need for caps every *month* of the year in this case.

## 2. The PMPD Does Not Conform With Requirements Concerning The Coastal Act

### *(a) The PMPD Fails To Make The Required Factual and Legal Findings Regarding The California Coastal Commission's Conformity Conditions For This Project*

Even if this proposed project did meet all of the requirements under CEQA (which it does not), it cannot be legally licensed (as the PMPD recommends) because it will not “*maintain, enhance, and where feasible restore*” the marine resources of Santa Monica Bay, nor will it “*minimize [where feasible] the adverse effects of . . . entrainment*” as expressly required by the California Coastal Act. See Public Resources Code Sections 30230 and 30231.

Staff has discussed the legal and factual defects of this project *vis a vis* the California Coastal Act requirements in our Opening Brief (pp. 15-22) and Reply Brief (pp. 1-3 and 5-7), and we will not repeat that material in detail in these PMPD Comments. However, it is important for the Committee/Commission to understand that when a proposed project is located within the “coastal zone,” as is the case in this proceeding, the CEC is legally *required* under the Warren Alquist Act to include in its written decision the conformity recommendations of the California Coastal Commission *unless it specifically finds that these recommendations would result in “greater adverse impacts to the environment” or “would not be feasible.”* See Public Resources Code Section 25523(b) and Title 20, CCR, Section 1752(c). In this case, the PMPD has rejected the specific conformity conditions required by the California Coastal Commission without making any of the mandatory Warren Alquist Act findings concerning one condition, and without any substantial evidence in the record concerning the other condition.

Specifically, in various duly noticed public hearings, properly filed written comments and actual testimony presented at the evidentiary hearings in this case, the California Coastal Commission has repeatedly stated that this project is not consistent with the California Coastal Act because it will not “maintain, enhance, and where feasible restore” the marine resources of Santa Monica Bay, nor will it “minimize [where feasible] the adverse effects of . . . entrainment,” as required under the California Coastal Act. The Coastal Commission has expressly recommended that the Energy Commission either (1) require the use of the Hyperion Wastewater Cooling Alternative as a condition of certification; or (2) deny project certification until such time as (a) a proper site-specific entrainment study has been tendered to the CEC, *and* (b) appropriate mitigation measures, in conformity with the California Coastal Act, have been imposed.

The PMPD rejects both of the specific conformity conditions recommended by the Coastal Commission. However, the PMPD fails to make any determination regarding the “infeasibility” or “adverse environmental impacts” of performing a proper site-specific

entrainment study and imposing the appropriate mitigation measures accordingly, as the Coastal Commission has specifically recommended in one of its options. In fact, there is no evidence that performing such a reliable, site-specific entrainment/impingement would be either infeasible or would cause any environmental harm. To the contrary, the undisputed evidence reveals that such a study could be completed within 15 months, well before this project would ever come on line, and it does not require that the plant be operating for the data to be properly collected and analyzed. (See Staff's Opening Brief at pp. 21-22). In short, regarding the Coastal Commission's recommended "reliable study and additional mitigation" option, the PMPD has made none of the findings required under the Warren Alquist Act and there is no evidentiary basis for rejecting this option at all.

Regarding the Coastal Commission's other recommended option concerning the Hyperion Wastewater Cooling Alternative, Staff has documented that this option has "*no fatal flaws*" regarding feasibility. Conversely, the Applicant has failed to carry its burden of proving that this alternative is not feasible. Instead, the Applicant has relied on certain questionable legal arguments and related "straw man" factual assertions to suggest that this alternative may not be feasible. (See Staff's Opening Brief at pp. 16-21). While the PMPD acknowledges that the Hyperion Wastewater Cooling Alternative is both "interesting and innovative" (PMPD at p. 53), it goes on to cite all of the *speculative* feasibility issues which the Applicant has raised as if these were somehow proof that this alternative is, in fact, "infeasible." (See PMPD at pp. 61-69). Thus, the PMPD has failed to cite any substantial evidence proving that the Coastal Commission's recommended Hyperion Wastewater Cooling Alternative is not actually feasible, but instead the PMPD relies entirely on *speculative* evidence and incorrect statements of law to show that this option may not be feasible.

Finally, the PMPD claims that by requiring the Gunderboom feasibility study and the payment of one million dollars to the Santa Monica Bay Restoration Commission, the decision has met the "restore and enhance" requirements of the California Coastal Act (PMPD at pp. 59-61). This is incorrect because these measures were not recommended by the Coastal Commission, and the PMPD has not determined that the Gunderboom study and the million dollar payment to the Restoration Commission is all the restoration and enhancement that is "feasible" in this case, nor is there any evidence to support such a finding in the record. As such, this portion of the PMPD does not comply with the California Coastal Act.

In short, the PMPD has rejected both of the "conformity" options recommended by the California Coastal Commission, but has failed to meet the legal standards required under the Warren Alquist Act in doing so. For this reason alone, the PMPD should not be approved in its current form.

*(b) The PMPD Misinterprets The Legal Responsibilities of the Coastal Commission*

The PMPD also devotes several pages to describing and interpreting the City of El Segundo's Local Coastal Program (LCP), as adopted in 1982. (PMPD at pp. 55-58). Staff concludes that this entire discussion is not relevant and/or is entirely superceded by the determinations of the Coastal Commission for the reasons discussed in detail in our briefs. (See Staff's Reply Brief at pp. 1-3). The Coastal Commission has testified without contradiction on this topic, and we expect that their Comments on this PMPD will again point out why reference to or reliance on the LCP in this case is legally and factually inappropriate. We urge the Committee/Commission to edit this portion of the PMPD to conform with the law.

**D. The PMPD Rulings Are Unnecessary From An "Electricity Resource" Perspective**

In completing Staff's Comments regarding the "Biological Resources" section of the PMPD, it is important to recognize that the PMPD, as currently written, is unnecessary to ensure that California's electricity resource requirements will be met. This is so for two reasons, as we discuss further below, namely: (1) Staff is not recommending a complete denial of this project; and (2) the proposed project will be able to operate at full capacity, 365 days per year under the Staff's recommendations.

**1. Staff Is Not Recommending Denial Of This Project**

In its testimony, Staff has recommended two distinct options that would allow the Energy Commission to issue a license for this project, namely (a) the "wastewater cooling alternative" or (b) the "fully mitigated option" referred to as the "*three-legged stool*." The latter option requires: (i) an appropriate "zero baseline" annual and monthly cap to maintain the existing physical environment; (ii) the completion of a current, scientifically reliable entrainment/impingement study to be conducted after licensing but prior to the start of project operations; and (iii) the payment of all "feasible" funds into a trust account to compensate (through off-site mitigation) for whatever harm the reliable biological resource impact study shows the project will actually cause. No certification should be issued until the Committee/Commission has reopened the evidentiary record to determine what is feasible for restoration and enhancement in this case. If either of these two options is adopted by the Committee/Commission, Staff has and will continue to recommend that this project be approved.

**2. The Proposed Project Can Be Operated At Full Capacity Under Staff's Proposal**

The undisputed evidence in the record proves that the proposed project will require no more the *150 million gallons per day* (mgd) of cooling water to operate at full combined cycle capacity, at any time, year-round. (See RT 2/18/03, Mr. Schoonmaker, at p. 230 lines 9-14). Staff's recommended "zero baseline" annual and monthly caps, contained in the fully mitigated "three-legged stool" option, would provide the Applicant with between *235 mgd and 347mgd* of cooling water every single day of the year, thus allowing far

more cooling water than is needed to run the proposed project at full combined cycle capacity anytime the Applicant so desires, while still providing a large daily “surplus” of cooling water for the Applicant to run its far less efficient existing Units 3 and 4 as well. (See Staff’s Opening Brief at pp. 21-22, and Staff’s Evidentiary Exhibit #32).

Given the clear “win-win” opportunity that is possible in this particular case, we strongly urge the Committee/Commission to either: (a) approve this project with the “Biological Resources” conditions contained in the Appendix to these Staff Comments: or (b) require the Applicant to amend its AFC to include the Hyperion Wastewater Cooling Alternative in lieu of the once-through cooling as now proposed and authorized in the PMPD.

## **II. THE PMPD OMITTS IMPORTANT, STIPULATED CONDITIONS OF CERTIFICATION.**

In addition to Staff’s concerns regarding the “Biological Resources” portion of the PMPD, the PMPD fails to include, or has made significant changes to a substantial number of important Conditions of Certification that were agreed to by stipulation of the parties, and submitted into evidence without objection. These conditions, and related edits, are essential to the legal integrity and enforceability of the decision. Accordingly, Staff has identified these errors and omissions in the PMPD on a line-by-line basis in the Appendix to these Comments, using an “underline” and “strikeout” format to highlight where specific words need to be added or deleted to comply with the Conditions stipulated to by the parties.

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### III. CONCLUSIONS CONCERNING THE EI SEGUNDO PMPD.

The PMPD for the proposed El Segundo Repower Project needs to be fundamentally revised regarding the “Biological Resources” topic to either:

(A) Require each of the “fully mitigated” conditions consistent with Staff’s recommended “three-legged stool” option, namely (i) a proper zero baseline “annual” cap and related “monthly” cap for *every month of the year*; (ii) a reliable site-specific entrainment study completed prior to start of project operation; and (iii) all feasibly affordable funds placed in trust to “maintain, restore and enhance” the marine resources of Santa Monica Bay, consistent with the study’s findings. No certification should be issued until the Committee/Commission has reopened the evidentiary record to determine what is feasible for restoration and enhancement in this case. (See these conditions in the “Biological Resources” section of the Appendix to Staff’s Comments); or

(B) Require the Applicant to file an amended AFC proposing to implement the Hyperion Wastewater Cooling Alternative.

Staff specifically recommends that the following three Conditions of Certification to replace the Biological Resources conditions in the PMPD, Pages 68 through 71. These Conditions of Certification are necessary to comply with CEQA, the Warren-Alquist Act and the California Coastal Act.

#### 1. Implementation of monthly and annual cooling water flow caps to meet CEQA

**BIO-1** The project owner shall implement a total “annual” flow cap on the combined total of Intake #1 and Intake #2 of 101.5 billion gallons per year. The project owner shall also implement the following combined total “monthly” flow caps for each specified month below (numbers represent million gallons per month):

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
7635	7231	7519	7176	8038	8370	9923	10,532	10,410	9463	7965	7270

**Verification:** During project operation, the project owner shall provide to the CPM quarterly reports that detail monthly totals. Quarterly reports will be provided to the CPM within 10 working days following the end of each quarter. Total annual flow and a review of the previous year’s monthly flows will be provided in the Annual Compliance Report.

The project owner can request that the CPM consider a variance from a month-to-month flow cap if an emergency situation (e.g. energy crisis) arises.

If the entrainment/impingement study required by **BIO-2**, below, establishes that less stringent annual or monthly flow caps will avoid significant adverse direct or cumulative

marine resource impacts, then the project owner can apply to the Energy Commission for consideration of adjustment of the flow cap requirement(s) in accordance with the study's findings.

## **2. Completion of an Impingement and Entrainment study to determine impacts prior to the start of project commissioning**

**BIO-2** The project owner shall conduct a site-specific, reliable, 316(b) scientific study to determine the marine resource impacts of the project's once-through cooling system. This study shall sample the intake and source water to determine the fractional losses of fish larvae relative to their abundance in the source water specific to the El Segundo Generating Station cooling water system.

Sampling design and data analysis protocols shall follow those developed from the recent studies done at Diablo Canyon, Moss Landing, San Onofre, Morro Bay, and Huntington Beach power plants, and the results used to determine the significance of impingement and entrainment losses on fish populations. This analysis shall also determine the cumulative impingement/entrainment impacts of all Santa Monica Bay coastal power plants on nearshore fish populations and other marine organisms. The study protocols, analysis, results, and conclusions of the monitoring study shall be documented in a scientific style report and submitted to the CPM for review and approval. Other agencies, including the California Coastal Commission, the National Marine Fisheries Service, the California Department of Fish and Game, and the Los Angeles Regional Water Quality Control Board shall be consulted in the development and review of the study design. These agencies will also be involved with the review of draft reports and a final report upon completion of the study.

**Verification:** Within 90 days of Energy Commission certification, the project owner shall provide an impingement/entrainment study plan for approved by the CPM, in consultation with the agencies listed above. Within 30 days of the CPM's approval of the study plan, the project owner shall commence the actual study, and complete this effort as soon thereafter as possible. During the study, the project owner will provide to the CPM monthly status reports including all data collected within 10 working days of the end of the previous month and quarterly analyses of study results within 10 working days of the end of the previous quarter's field sampling. The project owner will provide to the CPM a draft final report within 60 days of completion of the impingement, entrainment, and source water sampling studies, and a final report within 120 days from the end of field sampling.

**3. Submittal of all funds needed to guarantee the “restoration and enhancement to the extent feasible,” of the marine resources of Santa Monica Bay**

**BIO-3** The project owner shall pay all feasible restoration and enhancement funds, as determined and ordered by the Energy Commission prior to certification, into a Santa Monica Bay Restoration and Enhancement Trust Account.

**Verification:** Within 90 days of Energy Commission certification of the project, the project owner shall deposit the restoration and enhancement funds required by the Energy Commission into such trust fund as specified by the CPM.

In addition to these Conditions concerning “Biological Resources”, the PMPD needs to be revised to properly include each of the various stipulated Conditions of Certification that were omitted or modified, as reflected in the specific revisions contained in “strikeout” and “underline” format in the Appendix to these Staff’s Comments.

Dated: February 17, 2004

Respectfully submitted,

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DAVID F. ABELSON  
Senior Staff Counsel for the  
Energy Commission Staff  
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APPENDIX TO STAFF'S  
EL SEGUNDO PMPD COMMENTS

## AIR QUALITY

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From page 16 of the PMPD:

### Construction Equipment/Fugitive Dust

The power plant construction requires the use of large earth moving equipment, which generates considerable combustion emissions themselves, along with creating fugitive dust emissions during grading, site preparation, foundations, underground utility installation, and building erection.

ESPR ~~did not~~ performed an air dispersion modeling analyses of the potential construction impacts at the project site. However, ~~b~~Both ESPR and the Energy Commission staff agreed that any construction impacts would be mitigated to the extent feasible by “boilerplate” construction Conditions of Certification. The boilerplate construction Conditions of Certification were derived from previously certified large and lengthy construction projects and thus will be very effective for this project.

### CONDITIONS OF CERTIFICATION

Condition **AQ-C5** was omitted after it had been previously agreed to by the parties:

**AQ-C5** The project owner shall commit specific emission reduction credits certificates for the ESPR to offset the project emissions as provided for in Table AQ-C5-1. The project owner shall not use of any ERCs to be surrendered in the Table AQ-C5-1 for purposes other than offsetting the ESPR.

**TABLE AQ-C5-1 – Emission Offset Requirements**

<b><u>CERTIFICATE NUMBER</u></b>	<b><u>Amount (lbs/day)</u></b>	<b><u>Pollutant</u></b>
<b><u>AQ003331</u></b>	<u>47</u>	<u>SO2</u>
<u>AQ003332</u>	<u>13</u>	<u>SO2</u>
<u>AQ003333</u>	<u>17</u>	<u>SO2</u>
<u>AQ003334</u>	<u>75</u>	<u>SO2</u>
<u>AQ003336</u>	<u>19</u>	<u>SO2</u>
<u>AQ003463</u>	<u>1</u>	<u>SO2</u>
<u>AQ003464</u>	<u>1</u>	<u>SO2</u>
<u>AQ004450</u>	<u>10</u>	<u>SO2</u>
<u>AQ004498</u>	<u>10</u>	<u>SO2</u>
<b><u>Total of Certificates Identified</u></b>	<u>193</u>	<u>SO2</u>
<b><u>Total to be surrendered</u></b>	<u>43</u>	<u>SO2</u>
<u>District Exempted Emission Offsets</u>	<u>29</u>	<u>SO2</u>

<b><u>Total surrendered &amp; exempted emissions</u></b>	<b><u>72</u></b>	<b><u>SO2</u></b>
<u>AQ003327</u>	<u>70</u>	<u>VOC</u>
<u>AQ004580</u>	<u>20</u>	<u>VOC</u>
<u>AQ003722</u>	<u>95</u>	<u>VOC</u>
<b><u>Total of Certificates Identified</u></b>	<b><u>185</u></b>	<b><u>VOC</u></b>
<b><u>Total to be surrendered</u></b>	<b><u>140</u></b>	<b><u>VOC</u></b>
<b><u>TOTAL SURRENDERED EMISSIONS</u></b>	<b><u>140</u></b>	<b><u>VOC</u></b>
<u>AQ003352</u>	<u>6</u>	<u>PM10</u>
<u>AQ003462</u>	<u>2</u>	
<u>AQ003550</u>	<u>2</u>	
<u>AQ003568</u>	<u>3</u>	
<u>AQ004145</u>	<u>1</u>	<u>PM10</u>
<u>AQ004322</u>	<u>5</u>	<u>PM10</u>
<u>AQ004323</u>	<u>3</u>	<u>PM10</u>
<u>AQ004326</u>	<u>2</u>	<u>PM10</u>
<b><u>Total of Certificates Identified</u></b>	<b><u>24</u></b>	<b><u>PM10</u></b>
<b><u>Total to be surrendered</u></b>	<b><u>24</u></b>	<b><u>PM10</u></b>
<u>1304 Exempted Emission Offsets</u>	<u>173</u>	<u>PM10</u>
<u>Priority Reserve Purchased</u>	<u>291</u>	<u>PM10</u>
	<u>58</u>	<u>PM10</u>
<b><u>PRIORITY RESERVE FROM DISTRICT</u></b>		
<b><u>Total surrendered &amp; exempted emissions</u></b>	<b><u>546</u></b>	<b><u>PM10</u></b>

The project owner shall request from the District a report of the NSR Ledger Account for the ESPR after the District has granting the ESPR a Permit to Construct. Such report to specifically identify the ERCs, Priority Reserve Credits and Rule 1304 Exempted Emissions used to offset the project emissions. The project owner shall submit this report to the CPM prior to turbine first fire.

**Verification:** No more than 15 days following the issuance of the District's Permit to Construct, the project owner shall request from the District the report of the NSR Ledger Account for the ESPR. The project shall submit the report of the NSR Ledger Account for the ESPR to the CPM no less than 30 days prior to turbine first fire.

**Agreed to modifications to the following Conditions were excluded in the PMPD:**

**AQ-9:** The project owner shall submit to the Commission, Quarterly Operational Reports that include the fuel use associated with each gas turbine train (both gas turbine and duct burner), in addition to the CO and NOx CEMS recorded data for each gas turbine exhaust stack on an hourly basis in order to verify the following emissions limits.

Except during start-up, shutdown and initial commissioning, emissions from each gas turbine exhaust stack shall not exceed the following limits:

NOx (measured as NO <sub>2</sub> ):	2.5 ppm at 15% oxygen on a dry basis averaged over one hour and 18.27 lbs/hour.
CO:	62 ppm at 15% oxygen on a dry basis averaged over 1 hour and 11.12 lbs/hr.
SOx (measured as SO <sub>2</sub> ):	1.76 lbs/hr
VOC:	6.37 lbs/hr
PM10:	15.0 lbs/hr
Ammonia:	5 ppm at 15% oxygen on a dry basis.

**Verification:** The project owner shall submit the Quarterly Operational Reports as specified herein to the CPM no later than 30 days following the end of each calendar quarter.

**AQ-17:** The 62 PPM CO emission limit(s) shall not apply during turbine commissioning and start-up periods. Start-up time shall not exceed 3 hours per day. The commissioning period shall not exceed 33 operating days from the date of initial start-up. The operator shall provide the AQMD with written notification of the initial start-up date. No more than one turbine shall be in start-up mode at any one time. Written records of commissioning and start-ups shall be maintained and made available upon request from AQMD.

**Verification:** The project owner shall make the site available for inspection by representatives of the District, California Air Resources Board (CARB), the United States Environmental Protection Agency (EPA) and the California Energy Commission (Commission).

**AQ-25:** The 62 PPMV CO emission limit(s) are averaged over 60 minutes at 15 percent oxygen, dry.

**Verification:** The project owner shall submit CEMS records demonstrating compliance with this condition as part of the Quarterly Operational Report required in AQ-9.

**AQ-26:** The 5 PPMV NH<sub>3</sub> emissions limit(s) are averaged over 60 minutes at 3 percent O<sub>2</sub>, dry. The operator shall calculate and continuously record the NH<sub>3</sub> slip concentration using the following:

~~—————~~  **$NH_3$  (ppmv) =  $[a - (b \cdot c / 1000000)] \cdot 1000000 / b$ , where**

~~—————~~ a = ammonia injection rate (lb/hr)/17 (lbs/lb mole)

~~—————~~ b = dry exhaust gas flow rate (lb/hr)/29 (lbs/lb mole)

~~—————~~ c = change in measured NO<sub>x</sub> across the SCR (ppmv, dry basis)

~~The operator shall install and maintain a NO<sub>x</sub> analyzer, or other method as approved by the District, to measure the SCR inlet NO<sub>x</sub> ppm accurate to within +/- 5 percent calibrated at least every 12 months.~~

**Verification:** The project owner shall submit CEMS records and all calculations demonstrating compliance with this condition as part of the Quarterly Operational Report required in **AQ-9**.

**AQ-27:** This equipment shall not be operated unless the operator demonstrates to the Executive Officer and the CPM that the facility holds sufficient RTCs to offset the prorated annual emissions increase for the first compliance year of operation. In addition, this equipment shall not be operated unless the operator demonstrates to the Executive Officer and the CPM that, at the commencement of each compliance year after the first compliance year of operation, the facility holds sufficient RTCs in an amount equal to the annual emissions increase.

**Verification:** The project owner shall submit to the CPM copies of all RECLAIM reports filed with the District in each Quarterly Operational Report (see **AQ-9**).

## BIOLOGICAL RESOURCES

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Biological Resources staff recommends the following edits and Conditions of Certification:

**Page 40 (Summary of Findings and Conclusions)** - Needs to state that the LARWQCB permits the use of 207 million gallons of seawater per day, not 208 million gallons per day.

**Page 41 (BIOLOGY – GENERAL)** - In the second sentence of the second paragraph, though needs to be changed to through.

**Page 44 (CEQA Environmental Impact Analysis)** – In the fourth paragraph, the sentence needs to read . . . “and subsequent improvement of sampling and study methodology as well as inappropriate . . . “

**Page 47 (The Appropriate Environmental Baseline)** – First sentence of the third paragraph states “Staff did not provide year-by-year flow data in its testimony.” Staff disagrees. Staff not only provided year-by-year flow data in the form of LARWQCB documents to the evidentiary record, but also provided monthly and daily averages for the five year period. (Staff’s Direct Written Testimony of 1/22/03, pp 6 & 7).

**Page 57 (Conformity to Coastal Act Policies and Provisions)** – Four paragraphs up from the bottom, the word Coast needs to be changed to Coastal.

**Page 69 (Cumulative Impacts)** – At the bottom of the page, the first sentence in the second paragraph makes reference to the project will not “provide any incremental impacts to riparian habitat.” Staff recommends removal of this sentence since impacts to riparian habitat has never been an issue for this case, so including this sentence is confusing and unnecessary.

## CONDITIONS OF CERTIFICATION

Staff proposes the following three Conditions of Certification to replace the Biological Resources conditions contained in the PMPD Pages 68 through 71. These Conditions of Certification are necessary to comply with CEQA, the Warren-Alquist Act and the California Coastal Act.

### Implementation of monthly and annual cooling water flow caps to meet CEQA

**BIO-1** The project owner shall implement a total “annual” flow cap on the combined total of Intake #1 and Intake #2 of 101.5 billion gallons per year. The project owner shall also implement the following combined total “monthly” flow caps for each specified month below (numbers represent million gallons per month):

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
7635	7231	7519	7176	8038	8370	9923	10,532	10,410	9463	7965	7270

**Verification:** During project operation, the project owner shall provide to the CPM quarterly reports that detail monthly totals. Quarterly reports will be provided to the CPM within 10 working days following the end of each quarter. Total annual flow and a review of the previous year's monthly flows will be provided in the Annual Compliance Report.

The project owner can request that the CPM consider a variance from a month-to-month flow cap if an emergency situation (e.g. energy crisis) arises.

If the entrainment/impingement study required by **BIO-2**, below, establishes that less stringent annual or monthly flow caps will avoid significant adverse direct or cumulative marine resource impacts, then the project owner can apply to the Energy Commission for consideration of adjustment of the flow cap requirement(s) in accordance with the study's findings.

### **Completion of an Impingement and Entrainment study to determine impacts prior to the start of project commissioning**

**BIO-2** The project owner shall conduct a site-specific, reliable, 316(b) scientific study to determine the marine resource impacts of the project's once-through cooling system. This study shall sample the intake and source water to determine the fractional losses of fish larvae relative to their abundance in the source water specific to the El Segundo Generating Station cooling water system.

Sampling design and data analysis protocols shall follow those developed from the recent studies done at Diablo Canyon, Moss Landing, San Onofre, Morro Bay, and Huntington Beach power plants, and the results used to determine the significance of impingement and entrainment losses on fish populations. This analysis shall also determine the cumulative impingement/entrainment impacts of all Santa Monica Bay coastal power plants on nearshore fish populations and other marine organisms. The study protocols, analysis, results, and conclusions of the monitoring study shall be documented in a scientific style report and submitted to the CPM for review and approval. Other agencies, including the California Coastal Commission, the National Marine Fisheries Service, the California Department of Fish and Game, and the Los Angeles Regional Water Quality Control Board shall be consulted in the development and review of the study design. These agencies will also be involved with the review of draft reports and a final report upon completion of the study.

**Verification:** Within 90 days of Energy Commission certification, the project owner shall provide an impingement/entrainment study plan for approved by the CPM, in consultation with the agencies listed above. Within 30 days of the CPM's approval of the study plan, the project owner shall commence the actual study, and complete this effort as soon thereafter as possible. During the study, the project owner will provide to the CPM monthly status reports including all data collected within 10 working days of the end of the previous month and quarterly analyses of study results within 10 working

days of the end of the previous quarter's field sampling. The project owner will provide to the CPM a draft final report within 60 days of completion of the impingement, entrainment, and source water sampling studies, and a final report within 120 days from the end of field sampling.

**Submittal of all funds needed to guarantee the “restoration and enhancement to the extent feasible,” of the marine resources of Santa Monica Bay**

**BIO-3** The project owner shall pay all feasible restoration and enhancement funds, as determined and ordered by the Energy Commission prior to certification, into a Santa Monica Bay Restoration and Enhancement Trust Account.

**Verification:** Within 90 days of Energy Commission certification of the project, the project owner shall deposit the restoration and enhancement funds required by the Energy Commission into such trust fund as specified by the CPM.

~~**BIO-1:** Prior to commercial operation, project owner shall place \$1,000,000 in trust to the Santa Monica Bay Restoration Commission. Use of the funds in trust must be restricted to improving understanding of the biological dynamics of Santa Monica Bay and for purposes of improving the health of the Santa Monica Bay biological habitat. This could include fish population studies, entrainment studies, or other studies approved by the Santa Monica Bay Restoration Project that focus on the Santa Monica Bay habitat. The funds in trust shall be administered by the Santa Monica Bay Restoration Commission, whose authority in determining the use of the funds shall be absolute. The Santa Monica Bay Restoration Commission shall have the responsibility to publish the results of any study(ies) conducted, and to account for the disposition of the funds in trust in a timely and detailed manner.~~

~~**Verification:** The Project Owner shall submit to CPM a copy of the receipt transferring the stipulated amount to the Santa Monica Bay Restoration Commission.~~

~~**BIO-2:** In consultation with the Los Angeles Regional Water Quality Control Board, the project owner shall conduct a study to determine the feasibility of constructing, deploying, and operating an aquatic filter barrier at intake #1 at ESGS. The feasibility study shall also determine expected benefits and potential impacts of the aquatic filter barrier if deployed and operated at intake #1. The feasibility study shall be submitted to the Los Angeles Regional Water Quality Control Board as part of the 2005 NPDES permit renewal process. If the Los Angeles Regional Water Quality Control Board finds that it is feasible to construct and operate an aquatic filter barrier and that the ESGS intake #1 site is suitable for a demonstration, the project owner shall construct and operate the aquatic filter barrier.~~

~~**Verification:** The project owner shall submit to CPM and the LARWQCB a complete analysis and all results of the feasibility study no later than 60 days prior to the submittal of the NPDES permit renewal application.~~

~~**BIO-3:** The project owner shall implement an annual cap on flow on the combined total of Intake #1 and Intake #2 of 139 billion gallons and shall also cap the monthly flow volumes in February at 9.4 billion gallons, March 9.8 billion gallons and April at 10.0 billion gallons. If future NPDES permitting establishes that an annual flow cap is not necessary to avoid significant impacts then the project owner shall apply for and receive changes to this Condition of Certification that removes the annual flow cap requirement. If the NPDES permit for ESGS is changed to incorporate entrainment control technology that confirms less than significant impacts then the project owner shall apply for and receive changes to this Condition of Certification that removes the annual flow cap. The project owner shall report any communication with the LARWQCB regarding renewal or modification of the NPDES permit for ESGS.~~

~~**Verification:** Project owner shall report to the CPM all communication efforts with the LARWQCB regarding entrainment and NPDES permit renewal or compliance. Project owner shall report, in its annual report, monthly flow volumes for both Intake #1 and Intake #2.~~

## CULTURAL RESOURCES

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**Staff comments:** The plant site is a likely location for discovering cultural resources. Vernon, Magnolia and Gilroy have discovered historic archaeological material in disturbed soil and fill on project sites. Another prehistoric archaeological site was discovered in the tank farm area of another project with a portion of the site located under one of the tanks. Soil disturbance and fill do not rule out the existence of an archaeological site, particularly if the ground disturbance for a project extends below the level of previous disturbance. Moreover, if human remains are discovered, they will need to be mitigated even if they have been previously disturbed or are located in fill.

**Page 73. Cultural Resources-Summary of Findings and Conclusions, Box at Top of Page**

Construction: There are no known prehistoric resources, historic resources, or human remains at the highly disturbed power plant site in the existing El Segundo Generation Station. ~~At most, there is a low potential for discovery of some unknown resource during construction excavation.~~ However, Ground disturbance during demolition at the plant site may exceed previously disturbed ground and fill. There are four previously recorded sites within ¼ mile of the project making this a likely location for encountering archaeological material (AFC pp. 5.7-25-5.7-32; Cultural Resources pp. 4.10-4.11)

**Staff comment:** See previous comment.

**Page 73. CULTURAL RESOURCES-GENERAL.** Last Sentence at bottom of page 73. ~~However, due to the prior disturbance at the existing power plant complex, the potential for undiscovered resources to be present at the power plant site appears to be very slight.~~

## EFFICIENCY

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Staff offers the following comments:

**Page 227, second box labeled "Energy Consumption Rate" line 2:** replace "49.6 percent" with "55.4 percent".

**Page 228, third paragraph, line 1:** replace "model 7421FA" with "model PG7241FA".

## FACILITY DESIGN

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The following comments consist of inserting language from our current standard Facility Design conditions, to replace obsolete and superceded language due to the aging of these September 2002 FSA conditions. Specifically:

1. References to the California Building Code (CBC) have been corrected to refer to the California Building Standards Code (CBSC). The CBC is one of the 12 codes that comprise the CBSC; the CBSC is state law.
2. References to the 1998 version of the Code have been updated to refer to the 2001 version, which is now required by state law. Please replace all 1998 references with 2001.
3. Language that would allow the City of El Segundo to act as Chief Building Official has been deleted. Staff has always maintained, and still maintains, that the City should not act as CBO. The CEC staff's normal delegate CBO selection process should be employed.
4. Language describing the major structures and equipment requiring CBO approval has been updated to include those features that could become health or safety hazards if not built in accordance with applicable codes.

### ENGINEERING - GENERAL

#### COMPLIES WITH APPLICABLE LAWS & REGULATIONS

To protect public health and safety as well as the viability of the project, the applicable power plant equipment, pipelines, and other non-transmission line structures shall be designed and constructed in accordance with the ~~1998~~2001 California Building Standards Code, or its successor.

The Chief Building Official ~~Officials of the City of El Segundo~~ shall review and approve the relevant design criteria and plans submitted by ESPR and conduct all necessary inspections.

**CONDITION:**

- ESPR shall construct the project using the most recent California Building Standards Code with the oversight and approval of the ~~local~~ Chief Building Official; shall assign California registered engineers to the project; and shall pay necessary in-lieu permit fees. Conditions: **GEN-1** through **GEN-8**.

*Reference: FSA Fac. Design, pp. 5.1-2-6.*

## STRUCTURAL ENGINEERING

### COMPLIES WITH APPLICABLE LAWS & REGULATIONS

Major structures and equipment are those necessary for power production, costly or time-consuming to repair, or those used for the storage of hazardous materials, or those that may become potential health and safety hazards if not constructed according to the applicable engineering LORS.

The AFC lists the design criteria essential to ensuring that the project is designed in a manner that protects the environment and public health and safety.

#### CONDITION:

- For earthquake safety of major structures, foundations, supports, anchorages, and tanks, ESPR will submit appropriate lateral force calculations, designs and plans to the Chief Building Official for approval. In addition, to ensure the safety of storage tanks, some of which contain hazardous materials, ESPR will submit plans and specifications to the Chief Building Official for approval. Conditions: **STRUC-1** through **STRUC-4**.

*Reference: FSA Fac. Design, pp. 5.1-15-18.*

Page 234, Engineering – General, bottom of page, see correction below:

#### CONDITIONS:

- ESPR shall construct the project using the most recent California Building Standards Code with the oversight and approval of the local Chief Building Official; shall assign California registered engineers to the project; and shall pay necessary in-lieu permit fees. Conditions: **GEN-1** through **GEN-8**.

Page 235, Structural Engineering, see corrections below:

## STRUCTURAL ENGINEERING

Major structures, systems and equipment are defined as those necessary for power production and are costly to repair or replace, or that require a long lead time to repair or replace, or those used for the storage, containment, or handling of hazardous or toxic materials, or those that may become potential health and safety hazards if not constructed according to the applicable engineering LORS. The AFC lists the civil, structural, mechanical and electrical design criteria and demonstrates the likelihood of compliance with applicable LORS, all of which is essential to ensuring that the project is designed in a manner that protects the environment and public health and safety.

The project will be designed and constructed consistent with the ~~1998~~2001 edition of the CBC, and other applicable codes and standards in effect at the time design and construction of the project actually commence. In the event the design of project is submitted to the Chief Building Official (CBO) for review and approval when the successor to the ~~1998~~2001 CBC is in effect, the ~~1998~~2001 CBC provisions, identified herein, shall be replaced with the applicable successor provisions.

The procedures and limitations for the seismic design of structures by the ~~1998~~2001 CBC are determined considering seismic zoning, site characteristics, occupancy, structural configuration, structural system and height. Different design and analysis

procedures are recognized in the ~~1998~~2001 CBC for determining seismic effects on structures. The dynamic lateral force procedure of Section 1631 is acceptable for design. The static lateral force procedure of Section 1630 is allowed under certain conditions of regularity, occupancy and height as determined under Section 1629.

## CONDITIONS OF CERTIFICATION

**GEN-1:** The project owner shall design, construct and inspect the project in accordance with the ~~1998~~2001 edition of the California Building Standards Code (CBSC) (also known as Title 24, California Code of Regulations), which encompasses the California Building Code (CBC), California Building Standards Administrative Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Energy Code, California Fire Code, California Code for Building Conservation, California Reference Standards Code, and all other applicable LORS in effect at the time initial design plans are submitted to the CBO for review and approval. (The ~~CBC~~CBSC in effect is that edition that has been adopted by the California Building Standards Commission and published at least 180 days previously.) All transmission facilities (lines, switchyards, switching stations, and substations) are covered by the **Transmission System Engineering** Conditions of Certification.

In the event that the initial engineering designs are submitted to the CBO when a successor to the ~~1998~~2001 ~~CBC~~CBSC is in effect, the ~~1998~~2001 ~~CBC~~CBSC provisions identified herein shall be replaced with the applicable successor provisions. Where, in any specific case, different sections of the code specify different materials, methods of construction, or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern.

**Verification:** Within 30 days after receipt of the Certificate of Occupancy, the project owner shall submit to the California Energy Commission Compliance Project Manager (CPM) a statement of verification, signed by the responsible design engineer, attesting that all designs, construction, installation and inspection requirements of the applicable LORS and the Energy Commission's Decision have been met in the area of facility design. The project owner shall provide the CPM a copy of the Certificate of Occupancy within 30 days of receipt from the CBO [~~1998~~2001 CBC, Section 109 – Certificate of Occupancy].

**Table 1: Major Structures and Equipment List**

<b>Equipment/System</b>	<b>Quantity (Plant)</b>
Combustion Turbine (CT) Foundation and Connections	2
HP/IP Steam Turbine (ST) Foundation and Connections	1
LP Steam Turbine (ST) Foundation and Connections	1
Combustion Turbine Generator Foundation and Connections	2
Steam Turbine Generator Foundation and Connections	1

<b>Equipment/System</b>	<b>Quantity (Plant)</b>
Heat Recovery Steam Generator (HRSG) Structure, Foundation and Connections	2
Auxiliary Transformer Foundation and Connections	2
CT Inlet Air Plenum Structure, Foundation and Connections	2
Inlet Air Evaporative Cooler Structure, Foundation and Connections	2
HRSG Exhaust Stack, Foundation and Connections	2
Isolated Phase Bus Duct	2
HRSG Transition Duct from CTG — Structure	2
Secondary Unit Substation/Transformer	2
Electrical/Control Center	2
Condenser Structure, Foundation and Connections	1
Feed Water Pump Foundation and Connections	4
Condensate Pump Foundation and Connections	2
Feed Water Heater Foundation and Connections	2
Air Compressor Foundation and Connections	2
CT Water Injection Skid Foundation and Connections	2
CT Static Starter Skid Foundation and Connections	2
CT Mechanical Accessory Compartment Foundation and Connections	2
Switchgear Equipment Building Structure, Foundation and Connections	2
CT Generator Step-up Transformer Foundation and Connections	2
ST Generator Step-up Transformer Foundation and Connections	1
HRSG Blowdown Tank Foundation and Connections	2
Boiler Circulating Pump Connections	8
Condensate Circulating Pump Foundation and Connections	4
Fuel Gas Heater Foundation and Connections	2
ST Lube Oil Package Foundation and Connections	1
Drain Cooler Foundation and Connections	1
Air Receiver Foundation and Connections	1
Air Dryer Foundation and Connections	1
Closed Cycle Cooling Water Heat Exchanger Foundation and Connections	2
Closed Cycle Cooling Water Pump Foundation and Connections	2
Potable Water Systems	1 Lot
Drainage Systems (including sanitary drain and waste)	1 Lot

Equipment/System	Quantity (Plant)
Building Energy Conservation Systems	1 Lot
Temperature Control and Ventilation Systems (including water and sewer connections)	1 Lot
High Pressure Piping	1 Lot
HVAC and Refrigeration Systems	1 Lot

**GEN-3:** The project owner shall make payments to the CBO for design review, plan check and construction inspection based upon a reasonable fee schedule to be negotiated between the project owner and the CBO. These fees may be consistent with the fees listed in the ~~1998~~2001 CBC [Chapter 1, Section 107 and Table 1-A, Building Permit Fees; Appendix Chapter 33, Section 3310 and Table A-33-A, Grading Plan Review Fees; and Table A-33-B, Grading Permit Fees], adjusted for inflation and other appropriate adjustments; may be based on the value of the facilities reviewed; may be based on hourly rates; or may be as otherwise agreed by the project owner and the CBO.

**Verification:** The project owner shall make the required payments to the CBO in accordance with the agreement between the project owner and the CBO. The project owner shall send a copy of the CBO's receipt of payment to the CPM in the next Monthly Compliance Report indicating that the applicable fees have been paid.

## LAWS, ORDINANCES, REGULATIONS & STANDARDS

### FACILITY DESIGN

APPLICABLE LAW	DESCRIPTION
Title 24, California Code of Regulations, which adopts the current edition of the California Building Standards Code (CBCBSC); the <del>1998</del> 2001 CBC for design of structures; American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code; and National Electrical Manufacturers Assoc. (NEMA) standards.	The applicable LORS for each engineering discipline, civil, structural, mechanical and electrical, are included in the application as part of the engineering appendix, Appendix N.

## **GENERAL CONDITIONS**

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The PMPD failed to include the 15 standard General Conditions that had been promulgated in the FSA and subsequently agreed to by the parties in this proceeding. The General Conditions are replicated in their entirety for inclusion in a Revised PMPD.

### **GENERAL CONDITIONS WITH MILESTONES INCLUDING COMPLIANCE MONITORING AND CLOSURE PLAN**

## **INTRODUCTION**

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The project General Conditions Including Compliance Monitoring and Closure Plan (Compliance Plan) have been established as required by Public Resources Code section 25532. The plan provides a means for assuring that the facility is constructed, operated and closed in compliance with air and water quality, public health and safety, environmental and other applicable regulations, guidelines, and conditions adopted or established by the California Energy Commission (Energy Commission) and specified in the written decision on the Application for Certification or otherwise required by law.

The Compliance Plan is composed of elements that:

- set forth the duties and responsibilities of the Compliance Project Manager (CPM), the project owner, delegate agencies, and others;
- set forth the requirements for handling confidential records and maintaining the compliance record;
- state procedures for settling disputes and making post-certification changes;
- state the requirements for periodic compliance reports and other administrative procedures that are necessary to verify the compliance status for all Energy Commission approved conditions;
- establish requirements for facility closure plans; and
- specify conditions of certification that follow each technical area that contain the measures required to mitigate any and all potential adverse project impacts associated with construction, operation and closure to an insignificant level. Each specific condition of certification also includes a verification provision that describes the method of assuring that the condition has been satisfied.

## **DEFINITIONS**

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To ensure consistency, continuity and efficiency, the following terms, as defined, apply to all technical areas, including Conditions of Certification:

## **SITE MOBILIZATION**

Moving trailers and related equipment onto the site, usually accompanied by minor ground disturbance, grading for the trailers and limited vehicle parking, trenching for

construction utilities, installing utilities, grading for an access corridor, and other related activities. Ground disturbance, grading, etc. for site mobilization are limited to the portion of the site necessary for placing the trailers and providing access and parking for the occupants. Site mobilization is for temporary facilities and is, therefore, not considered construction.

## **GROUND DISTURBANCE**

Onsite activity that results in the removal of soil or vegetation, boring, trenching or alteration of the site surface. This does not include driving or parking a passenger vehicle, pickup truck, or other light vehicle, or walking on the site.

## **GRADING**

Onsite activity conducted with earth-moving equipment that results in alteration of the topographical features of the site such as leveling, removal of hills or high spots, or moving of soil from one area to another.

## **CONSTRUCTION**

[From section 25105 of the Warren-Alquist Act.] Onsite work to install permanent equipment or structures for any facility. Construction does **not** include the following:

- a. the installation of environmental monitoring equipment;
- b. a soil or geological investigation;
- c. a topographical survey;
- d. any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any particular facility; or
- e. any work to provide access to the site for any of the purposes specified in a., b., c., or d.

## **START OF COMMERCIAL OPERATION<sup>1</sup>**

For compliance monitoring purposes, “commercial operation” is that phase of project development which begins after the completion of start-up and commissioning, where the power plant has reached steady-state production of electricity with reliability at the rated capacity. For example, at the start of commercial operation, plant control is usually transferred from the construction manager to the plant operations manager.

## **COMPLIANCE PROJECT MANAGER RESPONSIBILITIES**

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A Compliance Project Manager (CPM) will oversee the compliance monitoring and shall be responsible for:

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<sup>1</sup> A different definition of “Start of Commercial Operation,” may be included in the Air Quality (AQ) section (per District Rules or Federal Regulations). In that event, the definition included in the AQ section would only apply to that section.

1. ensuring that the design, construction, operation, and closure of the project facilities are in compliance with the terms and conditions of the Energy Commission Decision;
2. resolving complaints;
3. processing post-certification changes to the conditions of certification, project description, and ownership or operational control;
4. documenting and tracking compliance filings; and
5. ensuring that the compliance files are maintained and accessible.

The CPM is the contact person for the Energy Commission and will consult with appropriate responsible agencies and the Energy Commission when handling disputes, complaints and amendments.

All project compliance submittals are submitted to the CPM for processing. Where a submittal required by a condition of certification requires CPM approval the approval will involve all appropriate staff and management.

The Energy Commission has established a toll free compliance telephone number of **1-800-858-0784** for the public to contact the Energy Commission about power plant construction or operation-related questions, complaints or concerns.

## **PRE-CONSTRUCTION AND PRE-OPERATION COMPLIANCE MEETING**

The CPM may schedule pre-construction and pre-operation compliance meetings prior to the projected start-dates of construction, plant operation, or both. The purpose of these meetings will be to assemble both the Energy Commission's and the project owner's technical staff to review the status of all pre-construction or pre-operation requirements contained in the Energy Commission's conditions of certification to confirm that they have been met, or if they have not been met, to ensure that the proper action is taken. In addition, these meetings shall ensure, to the extent possible, that Energy Commission conditions will not delay the construction and operation of the plant due to oversight and to preclude any last minute, unforeseen issues from arising. Pre-construction meetings held during the certification process must be publicly noticed unless they are confined to administrative issues and processes.

## **ENERGY COMMISSION RECORD**

The Energy Commission shall maintain as a public record, in either the Compliance file or Docket file, for the life of the project (or other period as required):

- all documents demonstrating compliance with any legal requirements relating to the construction and operation of the facility;
- all monthly and annual compliance reports filed by the project owner;
- all complaints of noncompliance filed with the Energy Commission; and
- all petitions for project or condition changes and the resulting staff or Energy Commission action.

## **PROJECT OWNER RESPONSIBILITIES**

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It is the responsibility of the project owner to ensure that the general compliance conditions and the conditions of certification are satisfied. The general compliance conditions regarding post-certification changes specify measures that the project owner must take when requesting changes in the project design, compliance conditions, or ownership. Failure to comply with any of the conditions of certification or the general compliance conditions may result in reopening of the case and revocation of Energy Commission certification, an administrative fine, or other action as appropriate. A summary of the General Conditions of Certification is included as **Compliance Table 1** at the conclusion of this section. The designation after each of the following summaries of the General Compliance Conditions (**COM-1, COM-2, etc.**) refers to the specific General Compliance Condition contained in **Compliance Table 1**.

## **GENERAL CONDITIONS OF CERTIFICATION**

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### **COM-1, UNRESTRICTED ACCESS**

The CPM, responsible Energy Commission staff, and delegate agencies or consultants, shall be guaranteed and granted unrestricted access to the power plant site, related facilities, project-related staff, and the files and records maintained on site, for the purpose of conducting audits, surveys, inspections, or general site visits. Although the CPM will normally schedule site visits on dates and times agreeable to the project owner, the CPM reserves the right to make unannounced visits at any time.

### **COM-2, COMPLIANCE RECORD**

The project owner shall maintain project files onsite, or at an alternative site approved by the CPM, for the life of the project unless a lesser period of time is specified by the conditions of certification. The files shall contain copies of all “as-built” drawings, all documents submitted as verification for conditions, and all other project-related documents.

### **COM-3, COMPLIANCE VERIFICATION SUBMITTALS**

Each condition of certification is followed by a means of verification. The verification describes the Energy Commission’s procedure(s) to ensure post-certification compliance with adopted conditions.

Verification of compliance with the conditions of certification can be accomplished by:

1. reporting on the work done and providing the pertinent documentation in monthly and/or annual compliance reports filed by the project owner or authorized agent as required by the specific conditions of certification;
2. providing appropriate letters from delegate agencies verifying compliance;
3. Energy Commission staff audits of project records; and/or
4. Energy Commission staff inspections of mitigation or other evidence of mitigation.

A cover letter from the project owner or authorized agent is required for all compliance submittals and correspondence pertaining to compliance matters. **The cover letter subject line shall identify the involved condition(s) of certification by condition number and include a brief description of the subject of the submittal.** The project owner shall also identify those submittals **not** required by a condition of certification with a statement such as: “This submittal is for information only and is not required by a specific condition of certification.” When submitting supplementary or corrected information, the project owner shall reference the date of the previous submittal.

The project owner is responsible for the delivery and content of all verification submittals to the CPM, whether such condition was satisfied by work performed by the project owner or an agent of the project owner.

All submittals shall be addressed as follows:

**Donna Stone**  
**Compliance Project Manager**  
**California Energy Commission**  
**1516 Ninth Street (MS-2000)**  
**Sacramento, CA 95814**

If the project owner desires Energy Commission staff action by a specific date, they shall so state in their submittal and include a detailed explanation of the effects on the project if this date is not met.

## **COM-4, PRE-CONSTRUCTION MATRIX, TASKS PRIOR TO START OF CONSTRUCTION, AND COMPLIANCE REPORTING**

Prior to commencing construction a compliance matrix addressing only those conditions that must be fulfilled before the start of construction shall be submitted by the project owner to the CPM. This matrix will be included with the project owner’s **first** compliance submittal, and shall be submitted prior to the first pre-construction meeting, if one is held. It will be in the same format as the compliance matrix referenced below.

Construction shall not commence until the pre-construction matrix is submitted, all pre-construction conditions have been complied with, and the CPM has issued a letter to the project owner authorizing construction. Various lead times (e.g., 30, 60, 90 days) for submittal of compliance verification documents to the CPM for conditions of certification are established to allow sufficient staff time to review and comment and, if necessary, allow the project owner to revise the submittal in a timely manner. This will ensure that project construction may proceed according to schedule.

Failure to submit compliance documents within the specified lead-time may result in delays in authorization to commence various stages of project construction.

Verification lead times (e.g., 90, 60 and 30-days) associated with start of construction may require the project owner to file submittals during the certification process, particularly if construction is planned to commence shortly after certification.

It is important that the project owner understand that the submittal of compliance documents prior to project certification is at the owner's own risk. Any approval by Energy Commission staff is subject to change based upon the Final Decision.

There are two different compliance reports that the project owner must submit to assist the CPM in tracking activities and monitoring compliance with the terms and conditions of the Commission Decision. During construction, the project owner or authorized agent will submit Monthly Compliance Reports. During operation, an Annual Compliance Report must be submitted. These reports, and the requirement for an accompanying compliance matrix, are described below. The majority of the conditions of certification require that compliance submittals be submitted to the CPM in the monthly or annual compliance reports.

### **Employee Orientation**

Environmental awareness orientation and training will be developed for presentation to new employees during project construction as approved by Energy Commission staff and described in the conditions for Biological, Cultural, and Paleontological resources. At the time this training is presented, the project owner's representative shall present information about the role of the Energy Commission's delegate Chief Building Official (CBO) for the project. The role and responsibilities of the CBO to enforce relevant portions of the Energy Commission Decision, the CBSC, and other relevant building and health and safety requirements shall be briefly presented. As part of that presentation, new employees shall be advised of the CBO's authority to halt project construction activities, either partially or totally, or take other corrective measures, as appropriate, if the CBO deems that such action is required to ensure compliance with the Energy Commission Decision, the CBSC, and other relevant building and health and safety requirements. At least 30 days prior to construction, the project owner shall submit the proposed script containing this information for CPM review and approval.

### **COM-5, COMPLIANCE MATRIX**

A compliance matrix shall be submitted by the project owner to the CPM along with each monthly and annual compliance report. The compliance matrix is intended to provide the CPM with the current status of all compliance conditions in a spreadsheet format. The compliance matrix must identify:

1. the technical area;
2. the condition number;
3. a brief description of the verification action or submittal required by the condition;
4. the date the submittal is required (e.g., 60 days prior to construction, after final inspection, etc.);
5. the expected or actual submittal date;
6. the date a submittal or action was approved by the Chief Building Official (CBO), CPM, or delegate agency, if applicable;
7. the compliance status of each condition (e.g., "not started," "in progress" or "completed" (include the date); and

8. the project's preconstruction and construction milestones, including dates and status (if milestones are required).

Satisfied conditions do not need to be included in the compliance matrix after they have been identified as satisfied in at least one monthly or annual compliance report.

## **COM-6, MONTHLY COMPLIANCE REPORT**

The first Monthly Compliance Report is due one month following the Energy Commission business meeting date on which the project was approved, unless otherwise agreed to by the CPM. The first Monthly Compliance Report shall include an initial list of dates for each of the events identified on the **Key Events List. The Key Events List form is found at the end of this section.**

During pre-construction and construction of the project, the project owner or authorized agent shall submit an original and five copies (or amount specified by Compliance Project Manager) of the Monthly Compliance Report within 10 working days after the end of each reporting month. Monthly Compliance Reports shall be clearly identified for the month being reported. The reports shall contain, at a minimum:

1. a summary of the current project construction status, a revised/updated schedule if there are significant delays, and an explanation of any significant changes to the schedule;
2. documents required by specific conditions to be submitted along with the Monthly Compliance Report. Each of these items must be identified in the transmittal letter, and should be submitted as attachments to the Monthly Compliance Report;
3. an initial, and thereafter updated, compliance matrix which shows the status of all conditions of certification;
4. a list of conditions that have been satisfied during the reporting period, and a description or reference to the actions which satisfied the condition;
5. a list of any submittal deadlines that were missed accompanied by an explanation and an estimate of when the information will be provided;
6. a cumulative listing of any approved changes to conditions of certification;
7. a listing of any filings with, or permits issued by, other governmental agencies during the month;
8. a projection of project compliance activities scheduled during the next two months. The project owner shall notify the CPM as soon as any changes are made to the project construction schedule that would affect compliance with conditions of certification;
9. a listing of the month's additions to the on-site compliance file;
10. any requests, with justification, to dispose of items that are required to be maintained in the project owner's compliance file; and
11. a listing of complaints, notices of violation, official warnings, and citations received during the month, a description of the resolutions of any resolved complaints, and the status of any unresolved complaints.

## **COM-7, ANNUAL COMPLIANCE REPORT**

After construction is complete, the project owner shall submit Annual Compliance Reports instead of Monthly Compliance Reports. The reports are for each year of commercial operation and are due to the CPM each year at a date agreed to by the CPM. Annual Compliance Reports shall be submitted over the life of the project unless otherwise specified by the CPM. Each Annual Compliance Report shall identify the reporting period and shall contain the following:

1. an updated compliance matrix which shows the status of all conditions of certification (fully satisfied and/or closed conditions do not need to be included in the matrix after they have been reported as closed);
2. a summary of the current project operating status and an explanation of any significant changes to facility operations during the year;
3. documents required by specific conditions to be submitted along with the Annual Compliance Report. Each of these items must be identified in the transmittal letter, and should be submitted as attachments to the Annual Compliance Report;
4. a cumulative listing of all post-certification changes approved by the Energy Commission or cleared by the CPM;
5. an explanation for any submittal deadlines that were missed, accompanied by an estimate of when the information will be provided;
6. a listing of filings made to, or permits issued by, other governmental agencies during the year;
7. a projection of project compliance activities scheduled during the next year;
8. a listing of the year's additions to the on-site compliance file;
9. an evaluation of the on-site contingency plan for unplanned facility closure, including any suggestions necessary for bringing the plan up to date [see General Conditions for Facility Closure addressed later in this section]; and
10. a listing of complaints, notices of violation, official warnings, and citations received during the year, a description of the resolution of any resolved complaints, and the status of any unresolved complaints.

## **COM-8, CONSTRUCTION AND OPERATION SECURITY PLAN**

At least 14 days prior to commencing construction, a site-specific Security Plan for the construction phase shall be submitted to the CPM for approval. At least 30 days prior to the initial receipt of hazardous materials on-site, a site-specific Security Plan for the operational phase shall be submitted to the CPM for review and approval.

### **Construction Security Plan**

The Construction Security Plan shall include the following:

1. site fencing enclosing the construction area;
2. use of security guards;

3. check-in procedure or tag system for construction personnel and visitors;
4. protocol for contacting law enforcement and the CPM in the event of suspicious activity or emergency; and
5. evacuation procedures.

### **Operation Security Plan**

1. The Operations Security Plan shall include the following:
2. permanent site fencing and security gate;
3. evacuation procedures;
4. protocol for contacting law enforcement and the CPM in the event of suspicious activity or emergency;
5. fire alarm monitoring system;
6. site personnel background checks, including employee and routine on-site contractors [Site personnel background checks are limited to ascertaining that the employee's claims of identity and employment history are accurate. All site personnel background checks shall be consistent with state and federal law regarding security and privacy.];
7. site access for vendors; and
8. requirements for Hazardous Materials vendors to prepare and implement security plans as per 49 CFR 172.800 and to ensure that all hazardous materials drivers are in compliance with personnel background security checks as per 49 CFR Part 1572, Subparts A and B.

In addition, the Security Plan shall include one or more of the following in order to ensure adequate perimeter security:

1. security guards;
2. security alarm for critical structures;
3. perimeter breach detectors and on-site motion detectors; and
4. video or still camera monitoring system.

### **Vulnerability Assessment**

In addition, in order to determine the level of security appropriate for this power plant, the project owner shall prepare a Vulnerability Assessment and implement site security measures addressing hazardous materials storage and transportation consistent with US EPA and US Department of Justice guidelines [Chemical Vulnerability Assessment Methodology (July 2002)]. The level of security to be implemented is a function of the likelihood of an adversary attack, the likelihood of adversary success in causing a catastrophic event, and the severity of consequences of that event. This Vulnerability Assessment will be based, in part, on the use and storage of certain quantities of acutely hazardous materials as described by the California Accidental Release Prevention Program (Cal-ARP, Health and Safety Code section 25531). Thus, the results of the off-site consequence analysis prepared as part of the Risk Management

Plan (RMP) will be used to determine the severity of consequences of a catastrophic event and hence the level of security measures to be provided.

The Project Owner shall fully implement the security plans and obtain CPM approval of any substantive modifications to the Security Plan. The CPM may authorize modifications to these measures, or may recommend additional measures depending on circumstances unique to the facility, and in response to industry-related security concerns.-9, Confidential Information

Any information that the project owner deems confidential shall be submitted to the Energy Commission's Docket with an application for confidentiality pursuant to Title 20, California Code of Regulations, section 2505(a). Any information, that is determined to be confidential shall be kept confidential as provided for in Title 20, California Code of Regulations, section 2501 et. seq.

### **COM-10, DEPARTMENT OF FISH AND GAME FILING FEE**

Pursuant to the provisions of Fish and Game Code Section 711.4, the project owner shall pay a filing fee in the amount of \$850. The payment instrument shall be provided to the Energy Commission's Project Manager (PM), not the CPM, at the time of project certification and shall be made payable to the California Department of Fish and Game. The PM will submit the payment to the Office of Planning and Research at the time of filing of the notice of decision.

### **COM-11, REPORTING OF COMPLAINTS, NOTICES, AND CITATIONS**

Prior to the start of construction, the project owner must send a letter to property owners living within one mile of the project notifying them of a telephone number to contact project representatives with questions, complaints or concerns. If the telephone is not staffed 24 hours per day, it shall include automatic answering with date and time stamp recording. All recorded inquiries shall be responded to within 24 hours. The telephone number shall be posted at the project site and made easily visible to passersby during construction and operation. The telephone number shall be provided to the CPM who will post it on the Energy Commission's web page at:

[http://www.energy.ca.gov/sitingcases/power\\_plants\\_contacts.html](http://www.energy.ca.gov/sitingcases/power_plants_contacts.html)

Any changes to the telephone number shall be submitted immediately to the CPM who will update the web page.

In addition to the monthly and annual compliance reporting requirements described above, the project owner shall report and provide copies of all complaint forms, notices of violation, notices of fines, official warnings, and citations, within 10 days of receipt, to the CPM. Complaints shall be logged and numbered. Noise complaints shall be recorded on the form provided in the **NOISE** conditions of certification. All other complaints shall be recorded on the complaint form (Attachment A).

## **FACILITY CLOSURE**

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At some point in the future, the project will cease operation and close down. At that time, it will be necessary to ensure that the closure occurs in such a way that public health and safety and the environment are protected from adverse impacts. Although the project setting for this project does not appear, at this time, to present any special or unusual closure problems, it is impossible to foresee what the situation will be in 30 years or more when the project ceases operation. Therefore, provisions must be made that provide the flexibility to deal with the specific situation and project setting that exist at the time of closure. Laws, Ordinances, Regulations and Standards (LORS) pertaining to facility closure are identified in the sections dealing with each technical area. Facility closure will be consistent with LORS in effect at the time of closure.

There are at least three circumstances in which a facility closure can take place, planned closure, unplanned temporary closure and unplanned permanent closure.

### **CLOSURE DEFINITIONS**

#### **Planned Closure**

A planned closure occurs at the end of a project's life, when the facility is closed in an anticipated, orderly manner, at the end of its useful economic or mechanical life, or due to gradual obsolescence.

#### **Unplanned Temporary Closure**

An unplanned temporary closure occurs when the facility is closed suddenly and/or unexpectedly, on a short-term basis, due to unforeseen circumstances such as a natural disaster or an emergency.

#### **Unplanned Permanent Closure**

An unplanned permanent closure occurs if the project owner closes the facility suddenly and/or unexpectedly, on a permanent basis. This includes unplanned closure where the owner remains accountable for implementing the on-site contingency plan. It can also include unplanned closure where the project owner is unable to implement the contingency plan, and the project is essentially abandoned.

## **GENERAL CONDITIONS FOR FACILITY CLOSURE**

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### **COM-12, PLANNED CLOSURE**

In order to ensure that a planned facility closure does not create adverse impacts, a closure process that provides for careful consideration of available options and applicable laws, ordinances, regulations, standards, and local/regional plans in existence at the time of closure, will be undertaken. To ensure adequate review of a planned project closure, the project owner shall submit a proposed facility closure plan to the Energy Commission for review and approval at least twelve months prior to commencement of closure activities (or other period of time agreed to by the CPM).

The project owner shall file 120 copies (or other number of copies agreed upon by the CPM) of a proposed facility closure plan with the Energy Commission.

The plan shall:

1. identify and discuss any impacts and mitigation to address significant adverse impacts associated with proposed closure activities and to address facilities, equipment, or other project related remnants that will remain at the site;
2. identify a schedule of activities for closure of the power plant site, transmission line corridor, and all other appurtenant facilities constructed as part of the project;
3. identify any facilities or equipment intended to remain on site after closure, the reason, and any future use; and
4. address conformance of the plan with all applicable laws, ordinances, regulations, standards, local/regional plans in existence at the time of facility closure, and applicable conditions of certification.

In the event that there are significant issues associated with the proposed facility closure plan's approval, or the desires of local officials or interested parties are inconsistent with the plan, the CPM shall hold one or more workshops and/or the Energy Commission may hold public hearings as part of its approval procedure.

In addition, prior to submittal of the proposed facility closure plan, a meeting shall be held between the project owner and the Energy Commission CPM for the purpose of discussing the specific contents of the plan.

As necessary, prior to or during the closure plan process, the project owner shall take appropriate steps to eliminate any immediate threats to public health and safety and the environment, but shall not commence any other closure activities, until Energy Commission approval of the facility closure plan is obtained.

### **COM-13, UNPLANNED TEMPORARY CLOSURE/ON-SITE CONTINGENCY PLAN**

In order to ensure that public health and safety and the environment are protected in the event of an unplanned temporary facility closure, it is essential to have an on-site contingency plan in place. The on-site contingency plan will help to ensure that all necessary steps to mitigate public health and safety impacts and environmental impacts are taken in a timely manner.

The project owner shall submit an on-site contingency plan for CPM review and approval. The plan shall be submitted no less than 60 days (or other time agreed to by the CPM) prior to commencement of commercial operation. The approved plan must be in place prior to commercial operation of the facility and shall be kept at the site at all times.

The project owner, in consultation with the CPM, will update the on-site contingency plan as necessary. The CPM may require revisions to the on-site contingency plan over the life of the project. In the annual compliance reports submitted to the Energy

Commission, the project owner will review the on-site contingency plan, and recommend changes to bring the plan up to date. Any changes to the plan must be approved by the CPM.

The on-site contingency plan shall provide for taking immediate steps to secure the facility from trespassing or encroachment. In addition, for closures of more than 90 days, unless other arrangements are agreed to by the CPM, the plan shall provide for removal of hazardous materials and hazardous wastes, draining of all chemicals from storage tanks and other equipment and the safe shutdown of all equipment. (Also see the analysis for the technical areas of Hazardous Materials Management and Waste Management.)

In addition, consistent with requirements under unplanned permanent closure addressed below, the nature and extent of insurance coverage, and major equipment warranties must also be included in the on-site contingency plan. In addition, the status of the insurance coverage and major equipment warranties must be updated in the annual compliance reports.

In the event of an unplanned temporary closure, the project owner shall notify the CPM, as well as other responsible agencies, by telephone, fax, or e-mail, within 24 hours and shall take all necessary steps to implement the on-site contingency plan. The project owner shall keep the CPM informed of the circumstances and expected duration of the closure.

If the CPM determines that an unplanned temporary closure is likely to be permanent, or for a duration of more than twelve months, a closure plan consistent with the requirements for a planned closure shall be developed and submitted to the CPM within 90 days of the CPM's determination (or other period of time agreed to by the CPM).

## **COM-14, UNPLANNED PERMANENT CLOSURE/ON-SITE CONTINGENCY PLAN**

The on-site contingency plan required for unplanned temporary closure shall also cover unplanned permanent facility closure. All of the requirements specified for unplanned temporary closure shall also apply to unplanned permanent closure.

In addition, the on-site contingency plan shall address how the project owner will ensure that all required closure steps will be successfully undertaken in the unlikely event of abandonment.

In the event of an unplanned permanent closure, the project owner shall notify the CPM, as well as other responsible agencies, by telephone, fax, or e-mail, within 24 hours and shall take all necessary steps to implement the on-site contingency plan. The project owner shall keep the CPM informed of the status of all closure activities.

A closure plan, consistent with the requirements for a planned closure, shall be developed and submitted to the CPM within 90 days of the permanent closure or another period of time agreed to by the CPM.

## **COM-15, CONSTRUCTION MILESTONES**

The following is the procedure for establishing and enforcing milestones, which include milestone dates for pre-construction and construction phases of the project.

Milestones and method of verification must be established and agreed upon by the project owner and the CPM no later than 30 days after project approval, the date of docketing. If this deadline is not met, the CPM will establish the milestones.

### I. ESTABLISH PRE-CONSTRUCTION MILESTONES TO ENABLE START OF CONSTRUCTION WITHIN ONE YEAR OF CERTIFICATION

1. Obtain site control.
2. Obtain financing.
3. Develop a demolition schedule for power blocks 1 and 2.
4. Develop a demolition schedule for the tank farm.
5. Mobilize site.
6. Begin rough grading for permanent structures (start of construction).

### II. ESTABLISH CONSTRUCTION MILESTONES FROM DATE OF START OF CONSTRUCTION

1. Begin pouring major foundation concrete.
2. Begin installation of major equipment.
3. Complete installation of major equipment.
4. Begin gas pipeline construction.
5. Complete gas pipeline interconnection.
6. Begin T-line construction.
7. Complete T-line interconnection.
8. Begin commercial operation.

The CPM will negotiate the above-cited pre-construction and construction milestones with the project owner based on an expected schedule of construction. The CPM may agree to modify the final milestones from those listed above at any time prior to or during construction if the project owner demonstrates good-cause for not meeting the originally-established milestones. Otherwise, failure to meet milestone dates without a finding of good cause is considered cause for possible forfeiture of certification or other penalties.

### III. A finding that there is good cause for failure to meet milestones will be made if any of the following criteria are met:

1. The change in any milestone does not change the established commercial operation date milestone.
2. The milestone is changed due to circumstances beyond the project owner's control.
3. The milestone will be missed, but the project owner demonstrates a good-faith effort to meet the project milestone.

4. The milestone is missed due to unforeseen natural disasters or acts of God which prevent timely completion of the milestones.

If a milestone date cannot be met, the CPM will make a determination whether the project owner has demonstrated good cause for failure to meet the milestone. If the determination is that good cause exists, the CPM will negotiate revised milestones.

If the project owner fails to meet one or more of the established milestones, and the CPM determines that good cause does not exist, the CPM will make a recommendation to the Executive Director. Upon receiving such recommendation, the Executive Director will take one of the following actions.

1. Conclude that good cause exists and direct that revised milestones be established; or
2. Issue a reprimand, impose a fine, or take other appropriate remedial action and direct that revised milestones be established; or
3. Recommend, after consulting with the Energy Facility Siting and Environmental Committee, that the Commission issue a finding that the project owner has forfeited the project's certification.

The project owner has the right to appeal a finding of no good cause, or any recommended remedial action, to the Energy Facility Siting and Environmental Committee, and to the full Commission.

## **CBO DELEGATION AND AGENCY COOPERATION**

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In performing construction monitoring of the project, Commission staff acts as, and has the authority of, the Chief Building Official (CBO). Commission staff may delegate CBO responsibility to either an independent third party contractor or the local building official. Commission staff retains CBO authority when selecting a delegate CBO including enforcing and interpreting state and local codes, and use of discretion, as necessary, in implementing the various codes and standards.

Commission staff may also seek the cooperation of state, regional and local agencies that have an interest in environmental control when conducting project monitoring.

## **ENFORCEMENT**

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The Energy Commission's legal authority to enforce the terms and conditions of its Decision is specified in Public Resources Code sections 25534 and 25900. The Energy Commission may amend or revoke the certification for any facility, and may impose a civil penalty for any significant failure to comply with the terms or conditions of the Energy Commission Decision. The specific action and amount of any fines the Energy Commission may impose would take into account the specific circumstances of the incident(s). This would include such factors as the previous compliance history.

whether the cause of the incident involves willful disregard of LORS, oversight, unforeseeable events, and other factors the Energy Commission may consider. Moreover, to ensure compliance with the terms and conditions of certification and applicable LORS, delegate agencies are authorized to take any action allowed by law in accordance with their statutory authority, regulations, and administrative procedures.

## **NONCOMPLIANCE COMPLAINT PROCEDURES**

Any person or agency may file a complaint alleging noncompliance with the conditions of certification. Such a complaint will be subject to review by the Energy Commission pursuant to Title 20, California Code of Regulations, section 1230 et seq., but in many instances the noncompliance can be resolved by using the informal dispute resolution process. Both the informal and formal complaint procedure, as described in current State law and regulations, are described below. They shall be followed unless superseded by current law or regulations.

### **Informal Dispute Resolution Procedure**

The following procedure is designed to informally resolve disputes concerning the interpretation of compliance with the requirements of this compliance plan. The project owner, the Energy Commission, or any other party, including members of the public, may initiate this procedure for resolving a dispute. Disputes may pertain to actions or decisions made by any party including the Energy Commission's delegate agents.

This procedure may precede the more formal complaint and investigation procedure specified in Title 20, California Code of Regulations, section 1230 et seq., but is not intended to be a substitute for, or prerequisite to it. This informal procedure may not be used to change the terms and conditions of certification as approved by the Energy Commission, although the agreed upon resolution may result in a project owner, or in some cases the Energy Commission staff, proposing an amendment.

The procedure encourages all parties involved in a dispute to discuss the matter and to reach an agreement resolving the dispute. If a dispute cannot be resolved, then the matter must be referred to the full Energy Commission for consideration via the complaint and investigation process. The procedure for informal dispute resolution is as follows:

#### **Request for Informal Investigation**

Any individual, group, or agency may request that the Energy Commission conduct an informal investigation of alleged noncompliance with the Energy Commission's terms and conditions of certification. All requests for informal investigations shall be made to the designated CPM.

Upon receipt of a request for informal investigation, the CPM shall promptly notify the project owner of the allegation by telephone and letter. All known and relevant information of the alleged noncompliance shall be provided to the project owner and to the Energy Commission staff. The CPM will evaluate the request and the information to determine if further investigation is necessary. If the CPM finds that further investigation is necessary, the project owner will be asked to promptly investigate the matter and,

within seven working days of the CPM's request, provide a written report of the results of the investigation, including corrective measures proposed or undertaken, to the CPM. Depending on the urgency of the noncompliance matter, the CPM may conduct a site visit and/or request the project owner to provide an initial report, within 48 hours, followed by a written report filed within seven days.

### **Request for Informal Meeting**

In the event that either the party requesting an investigation or the Energy Commission staff is not satisfied with the project owner's report, investigation of the event, or corrective measures undertaken, either party may submit a written request to the CPM for a meeting with the project owner. Such request shall be made within 14 days of the project owner's filing of its written report. Upon receipt of such a request, the CPM shall:

1. immediately schedule a meeting with the requesting party and the project owner, to be held at a mutually convenient time and place;
2. secure the attendance of appropriate Energy Commission staff and staff of any other agencies with expertise in the subject area of concern, as necessary;
3. conduct such meeting in an informal and objective manner so as to encourage the voluntary settlement of the dispute in a fair and equitable manner; and
4. after the conclusion of such a meeting, promptly prepare and distribute copies to all in attendance and to the project file, a summary memorandum which fairly and accurately identifies the positions of all parties and any conclusions reached. If an agreement has not been reached, the CPM shall inform the complainant of the formal complaint process and requirements provided under Title 20, California Code of Regulations, section 1230 et seq.

### **Formal Dispute Resolution Procedure-Complaints and Investigations**

If either the project owner, Energy Commission staff, or the party requesting an investigation is not satisfied with the results of the informal dispute resolution process, such party may file a complaint or a request for an investigation with the Energy Commission's General Counsel. Disputes may pertain to actions or decisions made by any party including the Energy Commission's delegate agents. Requirements for complaint filings and a description of how complaints are processed are in Title 20, California Code of Regulations, section 1230 et seq.

The Chairman, upon receipt of a written request stating the basis of the dispute, may grant a hearing on the matter, consistent with the requirements of noticing provisions. The Energy Commission shall have the authority to consider all relevant facts involved and make any appropriate orders consistent with its jurisdiction (Cal. Code Regs., tit. 20, §§ 1232-1236).

## **POST CERTIFICATION CHANGES TO THE ENERGY COMMISSION DECISION: AMENDMENTS, OWNERSHIP CHANGES, INSIGNIFICANT PROJECT CHANGES AND VERIFICATION CHANGES**

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The project owner must petition the Energy Commission pursuant to Title 20, California Code of Regulations, section 1769, in order to modify project design, operation or performance requirements, and to transfer ownership or operational control of the facility.

A petition is required for **amendments** and for **insignificant project changes** as specified below. For verification changes, a letter from the project owner is sufficient. In all cases, the petition or letter requesting a change should be submitted to the CPM, who will file it with the Energy Commission's Docket in accordance with Title 20, California Code of Regulations, section 1209.

The criteria that determine which type of approval process applies are explained below.

### **AMENDMENT**

The project owner shall petition the energy commission, pursuant to Title 20, California Code of Regulations, Section 1769, when proposing modifications to project design, operation, or performance requirements. If a proposed modification results in deletion or change of a condition of certification, or makes changes that would cause the project not to comply with any applicable laws, ordinances, regulations or standards, the petition will be processed as a formal amendment to the final decision, and must be approved by the full commission.

### **CHANGE OF OWNERSHIP**

Change of ownership or operational control also requires that the project owner file a petition, and obtain Commission approval, pursuant to section 1769 (b).

### **INSIGNIFICANT PROJECT CHANGE**

Modifications that do not result in deletions or changes to conditions of certification, and that are compliant with laws, ordinances, regulations and standards may be authorized by the CPM as an insignificant project change pursuant to section 1769(a) (2).

### **VERIFICATION CHANGE**

A verification may be modified by the CPM without requesting an amendment to the decision if the change does not conflict with the conditions of certification and provides an effective alternate means of verification.

## COM-6, KEY EVENTS LIST

PROJECT: El Segundo Power Project

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DOCKET # 00-AFC-14

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COMPLIANCE PROJECT MANAGER: Donna Stone

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**EVENT DESCRIPTION**

**DATE**

Certification Date/Obtain Site Control	
Online Date	
<b>POWER PLANT SITE ACTIVITIES</b>	
Start Site Mobilization	
Start Ground Disturbance	
Start Grading	
Start Construction	
Begin Pouring Major Foundation Concrete	
Begin Installation of Major Equipment	
Completion of Installation of Major Equipment	
First Combustion of Gas Turbine	
Start Commercial Operation	
Complete All Construction	
<b>TRANSMISSION LINE ACTIVITIES</b>	
Start T/L Construction	
SYNCHRONIZATION WITH GRID AND INTERCONNECTION	
COMPLETE T/L CONSTRUCTION	
<b>FUEL SUPPLY LINE ACTIVITIES</b>	
Start Gas Pipeline Construction and Interconnection	
COMPLETE GAS PIPELINE CONSTRUCTION	
<b>WATER SUPPLY LINE ACTIVITIES</b>	
START WATER SUPPLY LINE CONSTRUCTION	
COMPLETE WATER SUPPLY LINE CONSTRUCTION	

**TABLE 1  
COMPLIANCE SECTION  
SUMMARY of GENERAL CONDITIONS OF CERTIFICATION**

<b>CONDITION NUMBER</b>	<b>PAGE #</b>	<b>SUBJECT</b>	<b>DESCRIPTION</b>
COM-1	4	Unrestricted Access	The project owner shall grant Energy Commission staff and delegate agencies or consultants unrestricted access to the power plant site.
COM-2	4	Compliance Record	The project owner shall maintain project files on-site. Energy Commission staff and delegate agencies shall be given unrestricted access to the files.
COM-3	4	Compliance Verification Submittals	The project owner is responsible for the delivery and content of all verification submittals to the CPM, whether the condition was satisfied by work performed by the project owner or his agent.
COM-4	5	Pre-construction Matrix, Tasks Prior to Start of Construction, and Compliance Reporting	Construction shall not commence until all of the following activities/submittals have been completed: <ul style="list-style-type: none"> <li>▪ property owners living within one mile of the project have been notified of a telephone number to contact for questions, complaints or concerns;</li> <li>▪ a pre-construction matrix has been submitted identifying only those conditions that must be fulfilled before the start of construction;</li> <li>▪ all pre-construction conditions have been complied with; and</li> <li>▪ the CPM has issued a letter to the project owner authorizing construction.</li> </ul>
COM-5	6	Compliance Matrix	The project owner shall submit a compliance matrix (in a spreadsheet format) with each monthly and annual compliance report which includes the status of all compliance conditions of certification.
COM-6	6	Monthly Compliance Report	During construction, the project owner shall submit Monthly Compliance Reports (MCRs) which include specific information. The first MCR is due the month following the Commission business meeting date on which the project was approved and shall include an initial list of dates for each of the events identified on the Key Events List (see page 19).

<b>CONDITION NUMBER</b>	<b>PAGE #</b>	<b>SUBJECT</b>	<b>DESCRIPTION</b>
COM-7	7	Annual Compliance Reports	After construction ends and throughout the life of the project, the project owner shall submit Annual Compliance Reports instead of Monthly Compliance Reports.
COM-8	8	Security Plans	Thirty days prior to commencing construction, the project owner shall submit a Security Plan for the construction phase. Sixty days prior to initial receipt of hazardous material on site, the project owner shall submit a Security Plan & Vulnerability Assessment for the operational phase.
COM-9	10	Confidential Information	Any information the project owner deems confidential shall be submitted to the Dockets Unit with an application for confidentiality.
COM-10	10	Dept of Fish and Game Filing Fee	The project owner shall pay a filing fee of \$850 at the time of project certification.
COM-11	10	Reporting of Complaints, Notices and Citations	Within 10 days of receipt, the project owner shall report to the CPM, all notices, complaints, and citations.
COM-12	11	Planned Closure	The project owner shall submit a closure plan to the CPM at least twelve months prior to commencement of a planned closure.
COM-13	12	Unplanned Temporary Closure/On-site Contingency Plan	To ensure that public health and safety and the environment are protected in the event of an unplanned temporary closure, the project owner shall submit an on-site contingency plan no less than 60 days prior to commencement of commercial operation.
COM-14	13	Unplanned Permanent Closure/On-site Contingency Plan	To ensure that public health and safety and the environment are protected in the event of an unplanned permanent closure, the project owner shall submit an on-site contingency plan no less than 60 days prior to commencement of commercial operation.
COM-15	14	Construction Milestones	To establish and enforce pre-construction and construction phases of the project

COMPLAINT REPORT/RESOLUTION FORM

PROJECT NAME: El Segundo Power Redevelopment Project AFC Number: 00-AFC-14C
<b>COMPLAINT LOG NUMBER</b> _____ Complainant's name and address:  Phone number:
Date and time complaint received: Indicate if by telephone or in writing (attach copy if written): Date of first occurrence:
Description of complaint (including dates, frequency, and duration):
Findings of investigation by plant personnel:  Indicate if complaint relates to violation of Energy Commission requirement: Date complainant contacted to discuss findings:
Description of corrective measures taken or other complaint resolution:  Indicate if complainant agrees with proposed resolution: If not, explain:  Other relevant information:
If corrective action necessary, date completed: Date first letter sent to complainant: _____ (copy attached) Date final letter sent to complainant: _____ (copy attached)
This information is certified to be correct. Plant Manager's Signature: _____ Date: _____

(Attach additional pages and supporting documentation, as required.)

## GEOLOGY AND PALEONTOLOGY

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Staff reviewed the PMPD and has made comments that may look fairly minor; however, they do make a difference in the decision's accuracy and technical correctness. An example is the addition of the word "moment" before magnitude. If moment is not used to describe magnitude one could think that Richter magnitude calculations would be OK to use. That would result in a different engineering standard than what is required, so it is desirable to specify "moment" magnitude. Other corrections include capitalization of Fault. It is proper geologic convention to capitalize both the name of the fault and the word fault following it. The other comments were the capitalization of another technical term Seismic Zone 4 (which is always capitalized) in technical material. Staff also changed a reference to the California Division of Mines and Geology because their name has changed since this project began. They are now known as the California Geologic Survey. Finally the verification heading for Conditions of Certification **GEO-1** is placed at the wrong paragraph (see change noted below).

**Page 86; please see corrections below to the first two paragraphs:**

### **Earthquake**

The project is located within Seismic Zone 4 per the ~~1998~~ 2001 edition of the California Building Code. There is no observable surface faulting at the project site. No active faults are known to cross the power plant site. A number of active faults lie within a 25-mile radius of the site. The closest active faults to the project are the Palos Verdes-Coronado Fault (2.1 miles southwest) and the North Branch of the Newport-Inglewood Fault Zone (7.3 miles northeast). The North Branch of the Newport-Inglewood Fault Zone is a right lateral strike slip fault with a slip rate of approximately 1 mm/year. The Newport-Inglewood Fault Zone has the potential to generate a moment magnitude 6.9 earthquake or greater...

The existing power plant was in operation during both the Sylmar moment magnitude 6.4 earthquake and Northridge moment magnitude 6.7 earthquake...

**Page 88 top of the page, 4<sup>th</sup> sentence:**

Soil borings contained in the AFC indicate ground water is present at depths as shallow as 10 feet below existing grade. The borings also indicate that locally loose sands underlie the site. As a result, the potential for liquefaction is moderate to high. The California Geological Survey ~~Division of Mines and Geology~~ has mapped the area as a liquefaction hazard zone.

## CONDITIONS OF CERTIFICATION

**GEO-1:** Prior to the start of construction, the project owner shall assign to the project an engineering geologist(s) and a geotechnical engineer(s) certified by the State of California, to carry out the duties required by the 2001 edition of the

California Building Code (CBC) Appendix Chapter 33, Section 3309.4. The certified engineering geologist(s) and geotechnical engineer(s) assigned must be approved by the CBO and submitted to the Compliance Project Manager (CPM) for concurrence.

**Verification:** At least 30 days (or a lesser number of days mutually agreed to by the project owner and the CPM) prior to the start of construction, the project owner shall submit to the CBO for approval the resume and license number(s) of the certified engineering geologist(s) and geotechnical engineer(s) assigned to the project. The submittal should include a statement that CPM concurrence is needed.

**Verification:** The CBO and CPM will approve or disapprove of the engineering geologist(s) and geotechnical engineer(s) and will notify the project owner of its findings within 15 days of receipt of the submittal. If the engineering geologist(s) and geotechnical engineer(s) are subsequently replaced, the project owner shall submit for approval the resume(s) and license number(s) of the newly assigned individual(s) to the CBO and CPM. The CBO and CPM will approve or disapprove of the engineering geologist(s) and geotechnical engineer(s) and will notify the project owner of the findings within 15 days of receipt of the notice of personnel change.

## HAZARDOUS MATERIALS

**Page 105, Table, Storage & Use Operation:** Offsite exposure to ammonia can be due to tank ruptures, pipeline ruptures or delivery spills. Ammonia will be piped in to this project.

### HAZARDOUS MATERIALS – SUMMARY OF FINDINGS AND CONDITIONS

STORAGE & USE	MITIGATION	None	YES
	<p><u>Construction:</u> No acutely hazardous materials related to construction will be used or stored on-site at the power plant. Some materials designated as hazardous such as gasoline, diesel fuel, motor oil, hydraulic fluid, solvents, cleaners, sealants welding flux, lubricants, paint and paint thinner will be used at the construction-site. Given the nature of these substances, the risk of off-site exposure is insignificant.</p> <p><u>Operation:</u> Hazardous and acutely hazardous material, such as aqueous ammonia, hydrazine, and natural gas will be used for power plant operation. Tank <u>or pipeline</u> ruptures or delivery spills are the only means by which there will be off-site exposure of on-site aqueous ammonia. The Project Owners have an approved Risk Management Plan that will be updated to reflect the project.</p> <p>Natural gas is currently delivered to the existing facility by pipeline and will not be stored on-site.</p> <p><b>MITIGATION:</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> The Project Owner shall not store and use amounts of acutely hazardous materials in excess of proposed quantities. Condition: <b>HAZ-1</b></li> <li><input checked="" type="checkbox"/> The Project Owner will update its Business Plan and Risk Management Plan. Conditions: <b>HAZ-2 &amp; HAZ-3</b></li> <li><input checked="" type="checkbox"/> The Project Owner will undertake a feasibility study of alternatives to hydrazine. Condition: <b>HAZ-4</b></li> </ul> <p><b>References: AFC § 5.15; FSA Hazardous Materials, p. 4.4-3-9.</b></p>		

**Page 107, third paragraph:** The proposed pipeline will run under Vista del Mar through an existing tunnel and not underground as indicated in the PMPD.

#### Aqueous Ammonia

The project will use Selective Catalytic Reduction (SCR) to reduce combustion-generated nitrogen oxide (NOx) emissions to comply with air permit requirements. Aqueous ammonia (29% ammonia and 71% water) will be used as a reactant within a catalyst to reduce the NOx to water vapor and nitrogen. The ammonia will be stored in a 20,000 gallon capacity double walled underground storage tank which is equipped with leak detectors, pressure relief valves and gauges for temperature and pressure. Aqueous ammonia will be delivered through a new pipeline from the neighboring

Chevron facility. The pipeline will be designed and built in accordance with current engineering standards and requirements. The bulk of the pipeline will be aboveground with about 15 percent being located underground. ~~during its routing under Vista del Mar~~ The underground sections of the pipeline will be engineered to minimize corrosion effects. Valves and other measures will be utilized on the entire pipeline to prevent releases of ammonia. The ammonia will be trucked in should the pipeline be down for any reason.

**Page 110, second paragraph:** Sites that utilize ammonia can cause cumulative impacts when combined with the ESGS projects.

## Cumulative Impacts

The hazardous material with the greatest potential to migrate off-site is aqueous ammonia. To determine the potential for cumulative impacts, an attempt was made to identify sites that handle ammonia and would subsequently create a potential cumulative ammonia impact in combination with the proposed project and also other sites in the project vicinity that use substances that react negatively with ammonia. No such businesses were identified. (AFC p. 5.15-18; FSA Waste Mgt., p. 4.4-6).

**Page 111, HAZ-3,** Inclusion of language that was furnished as part of errata to the FSA but was omitted in the PMPD.

## CONDITIONS OF CERTIFICATION

### RISK MANAGEMENT PLAN REVISION

**HAZ-3** The project owner shall revise the existing CalARP Program Risk Management Plan (RMP). Similarly, the project owner shall also revise its existing RMP pursuant to the USEPA RMP Program. Both RMPs shall be expanded to include discussions to prevent and control the accidental release of ammonia from the pipeline. Those discussions shall elaborate on the various safety devices selected for the pipeline including double sleeve construction, provisions for backup safety devices, protective shut-in actions, emergency support systems, monitoring programs and personnel training, as a minimum. The shut-in actions shall include responses to pipeline overpressures and also leaks. Backup safety devices to be considered for the pipeline shall include sprinklers, sprays, deluge systems or equivalent systems. Special emphasis shall be placed on the deployment of such devices in the vicinity of the overpass at Vista Del Mar Boulevard in order to eliminate any vulnerabilities at that location.

**Verification:** At least 45 days prior to start-up of Units 5, 6, and 7, the project owner shall furnish a final copy of each updated RMP to the CPM, CESFD and CMBFD. An initial draft of the CalARP RMP shall be provided to the CPM and the CESFD for review and comments. The final CalARP RMP shall be approved by the CPM. Similarly, an initial draft of the USEPA RMP shall be provided to the CPM and the CESFD for review and comments, at the time it is submitted to the USEPA for review. The final copy of the USEPA RMP shall reflect recommendations of the CPM and the CESFD.

## LAND USE

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Staff has reviewed the Land Use section of the PMPD and found two minor word errors and the wrong Condition of Certification **LAND-1**. Please replace the PMPD **LAND-1** with the Agreed to Condition of Certification **LAND-1** shown below.

**Page 121 first paragraph second sentence, correct spelling error:**

The City of Los Angeles and the State of California both have jurisdiction over the ~~Detweiler~~ Dockweiler State Beach parking area and the Hyperion parking area.

**Page 123 first paragraph second sentence:**

The Applicant contends that section 25529 is satisfied with its moving of the fence and installation of park-type benches along the bike path, which by County ordinance is not intended to ~~for~~ be for pedestrian use.

## CONDITION OF CERTIFICATION

**LAND-1** The project owner shall ensure that the project and its associated facilities are in compliance with the affected local jurisdiction's applicable adopted county or municipal code requirements for the project site's development (e.g., setbacks, zone district requirements, design criteria, height, sign requirements, etc.).

The project owner shall submit to the applicable city/county planning department for review and comment, a development plan showing site dimensions, design and exterior elevation(s) and any other item(s) that may be required by the local jurisdiction's planning department to conduct a ministerial review of the project and its associated facilities in accordance to the jurisdiction's site development requirements. The city/county planning department shall have 60 calendar days to review the plan(s) and provide written comments to the project owner. The project owner shall provide a copy of the city/county planning department's written comments and a copy of the development plan to the Energy Commission's Compliance Project Manager (CPM).

**Verification:** At least 90 calendar days prior to grading on the power plant project site and its associated facilities, the project owner shall submit the proposed development plan to the affected local jurisdiction for review and comment. The project owner shall provide any comment letters received from the local jurisdiction along with the proposed development plan to the CPM for review and approval.

The project owner shall submit written evidence to the CPM that demonstrates that the project conforms to the applicable adopted site development requirements of the affected local jurisdiction.

## NOISE

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**Page 135, Cumulative Impacts:** Please correct the spelling of the word “exceedances.”

### CONDITIONS OF CERTIFICATION

**Page 141, correct NOISE-8 third paragraph:**

**NOISE-8:** Heavy equipment operation and noisy construction or demolition work shall be restricted beginning at site mobilization as described below.

No pure tones are allowed outside of the hours of 7:30 A.M. to 6:00 P.M. Monday-Friday, and 9:00 A.M. to 6:00 P.M. Saturday. Haul trucks and other engine-powered equipment shall be equipped with adequate mufflers. Haul trucks shall be operated in accordance with posted speed limits. Truck engine exhaust brake use shall be limited to emergencies.

**Tank Farm Area:** Noise levels at any residential property line due to tank farm construction or demolition shall be limited to the average daytime hourly ambient  $L_{50}$  value plus 5 dBA, or 65 dBA  $L_{50}$ , whichever is lower for continuous noise. For intermittent noise (up to 30 minutes in one hour) the maximum noise levels shall be ambient  $L_{50}$  plus 10 dBA. Haul trucks and other engine-powered equipment shall be equipped with adequate mufflers. Haul trucks shall be operated in accordance with posted speed limits. Truck engine exhaust brake use shall be limited to emergencies.

## SOCIOECONOMICS

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Staff offers the following comments on the subject of Socioeconomics.

**Page 150 Summary of Findings and Conclusions, Environmental Justice, under Disproportionate Impacts add:**

Disproportionate Impacts: There are no significant project-related unmitigated adverse environmental or public health impacts. Potential air quality, public health, and hazardous materials handling impacts to the public have been mitigated to less than significant through the Conditions of Certification in this Decision. The location of the project at an existing power plant site causes no significant land use impact. There are no significant cumulative project impacts, nor significant adverse impacts that fall disproportionately upon minority or low-income populations.

**Page 152 second paragraph, third sentence under Schools, please correct as shown below:**

One-time school impact fees may be assessed once plans are submitted to the City of El Segundo Unified School District Building Department. (AFC p. 5.10-27; FSA Socioeconomics p. 4.8-5)

**Page 153 correct the sentence labeled Condition to include school as shown below:**

**CONDITION:**

- The Project Owner shall pay one-time development fees to the City of El Segundo for fire, police, school, and library services. Condition: **SOCIO-1**.

**Page 155 third paragraph, correct first sentence as shown below:**

Updated census tract block data were reviewed to assess the demographic profile within that six-mile radius of the proposed power plant site. On the basis of this data, the area within that six-mile radius is 60.9 percent minority population.

## VISUAL RESOURCES

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**Page 175, Summary of Findings and Conditions, View Blockage:** To accurately characterize Staff's testimony in regard to landscape screening and scenic view preservation, please revise the third sentence as follows:

Perimeter landscaping along Vista Del Mar Avenue; however, could potentially block scenic views of the coast and ocean if not properly designed.

**Page 177, last sentence of third paragraph under Objectionable Appearance:**

The PMPD states that "The overall visual quality of the ESGS site and vicinity is low to moderate." The citation given is FSA p. 4.11-11. This statement does not accurately summarize the FSA discussion referenced. The view discussed on this page of the FSA is the view of the power plant itself as seen from the bike path immediately west of the site, which was found by staff to be of low visual quality. Staff found views in the "vicinity" of the ESGS site (for example, views from Dockweiler Beach) to be of high quality. Please revise the sentence as follows:

The overall visual quality of the ESGS site ~~and vicinity~~ is low ~~to moderate~~.

**Page 178, third sentence under Viewer Exposure,** please revise the sentence as follows so it more clearly describes the visibility of the site and project from Dockweiler Beach:

From the North, beachgoers view the site and will see have uninterrupted views of the new facility with the replaced because units 1 and 2 to be replaced ~~which~~ are located on the north side of the site.

**Page 179, second full paragraph:** The source of the viewer concern ratings for the different types of viewers is not given; however, all but one of the ratings is similar to those used by staff. If the FSA is the source of the ratings please revise the last sentence as shown below to correspond to the rating staff assigned to motorists on Vista Del Mar at foreground viewing distances, such as at KOPs 3 and 8 (FSA pages 4.11-12 through 4.11-13 and 4.11-14).

Viewer concern is rated moderate to high for ~~commuters~~ motorists on Vista Del Mar, which include a combination of tourists, recreationists, residents, commuters, and others.

**Page 180, KOP 1 Dockweiler Beach, second paragraph:** Please revise the second sentence as follows to be consistent with the FSA, which is the source of the information:

Visual Quality is high, Visual Concern is high, and Visibility and Viewer Exposure are ~~very~~ high.

**Page 181, third paragraph:** please revise the first sentence as follows to be consistent with the FSA, which is the cited source:

Visual Quality is high, Viewer Concern is high and ~~Visibility and~~ Overall Viewer Exposure is moderate to high.

**Page 182, KOP 9 45<sup>th</sup> Street, second paragraph:** Please revise as follows to be consistent with the FSA, which is the cited source:

Visual Quality is moderate to high, Viewer Concern is high, and Visibility and Viewer Exposure to the ESPR project site would be low, but to the existing tank farm site (location of laydown and construction activities), is very high. Overall visual sensitivity is high. FSA pp. 4.11-27 pp. 4.11-13 through 4.11-14.

**Page 182, second paragraph:** The last sentence states that architectural treatment is conceptually depicted in the photograph that appears below this paragraph. However, the photograph presented in the PMPD depicts the landscaping that will be installed on the south boundary of the project site. Visual Resources Figure 13 (Architectural Treatment Option No. 4) from the FSA would be the appropriate image to use instead.

**Page 182, third paragraph, which reads as follows:** “Additionally, since the project includes removal of the tank farm, views will be changed as shown below, including before and after vegetative screening.” Only the “after” photograph is shown, and it actually appears above the paragraph. Please include the “before” image as well, and place both images below the introductory statement. Visual Resources Figures 15A and 15B from the FSA depict “before” and “after” views of the tank farm and landscape screening, respectively, as viewed from the upper level of a 45<sup>th</sup> Street residence.

**Page 183, View Blockage, second paragraph:** Please revise the last sentence as follows to accurately characterize staff’s testimony in regard to the balance to be struck between landscape screening and scenic view preservation as envisioned in staff’s proposed Condition of Certification **VIS-2**:

Perimeter landscaping along Vista Del Mar Avenue, however, could potentially block scenic views of the coast and ocean if not carefully designed.

**Page 183, Mitigation:** Revise the sentence as follows:

The Project Owner shall complete and implement an approved perimeter screening and onsite landscape plan that will provide for screening of the facility while preserving view corridors to the ocean. Condition **VIS-2**.

**Page 183, Scenic Designation:** The paragraph would be more consistent with the language of the second question under Aesthetics in Appendix G of the CEQA Guidelines (which appears to be the source of the PMPD discussion) if it were revised as follows:

There are no state designated scenic highways within the project viewshed. Therefore, the project would not have a substantial adverse effect on scenic resources within a state scenic highway corridor.

**VIS-2, page 187, item 2b)**, revise as follows to be consistent with the language (proposed by the City of Manhattan Beach and agreed to by the parties) that appears in staff's supplemental testimony on page 26:

b) graphic documentation on the plan and through digital photo simulations of Bay view corridors and power plant screening which would exist from Vista del Mar and the residential area east of Highland Avenue that has views of the project site, after project construction; and

**VIS-3, page 189, second paragraph:** The Coastal Commission's letter of March 5, 2002 (findings regarding visual impacts and Coastal Act consistency) delegates the responsibility of reviewing and commenting on the final project enhancement proposals to the Executive Director of the Coastal Commission. Therefore, please revise the first sentence of the second paragraph as it appeared in the document entitled "Second Set of Agreed-to-Conditions of Certification," as follows:

Prior to the start of construction, the project owner shall submit a design plan for the seawall, consistent with the Landscape Concept Plan, to the Executive Director of the Coastal Commission and City of El Segundo for review and comment, and to the CPM for review and approval. The treatment plan shall include:

**VIS-3, page 189, Verification:** For the reasons stated above, please revise the first sentence of the Verification as follows:

**Verification:** At least 120 days prior to start of construction, the project owner shall submit the seawall design plan to the Executive Director of the Coastal Commission and City of El Segundo for review and comment and to the CPM for review and approval.

**VIS-5, page 191, first sentence:** To ensure that the painting and treatment plan addresses all project structures visible to the public, please revise as follows:

Prior to the start of commercial operation, the project owner shall paint or treat ~~portions of Units 5, 6, and 7~~ project structures visible to the public, such that their colors minimize visual intrusion and contrast by blending with the landscape; their surfaces do not create glare; and they are consistent with local laws, ordinances, regulations, and standards.

**VIS-5, page 191, before the paragraph that starts:** "Prior to the start of construction..." insert the following paragraph that appeared in the document called "Second Set of Agreed-to-Conditions of Certification:"

The project owner shall consult with representatives of the Cities of El Segundo and Manhattan Beach to determine if specific treatment or painting options that may improve

the aesthetic appearance of the project are desired, and shall provide a report to the CPM.

**VIS-5, page 191, second paragraph, first sentence:** For the same reasons as stated previously, please revise as follows:

Prior to the start of construction, the project owner shall submit to the Executive Director of the Coastal Commission and the Cities of El Segundo and Manhattan Beach for review and comment, and to the CPM for review and approval, a specific treatment plan whose proper implementation will satisfy these requirements.

**VIS-6, page 191,** please revise the first sentence of the condition as follows so it is consistent with staff's standard condition language:

Prior to the start of commercial operation, the project owner shall design and install new permanent lighting for Units 5, 6 and 7, such that light bulbs and ~~the fronts of reflectors~~ are not visible from public viewing areas; lighting does not cause reflected glare; and illumination of the project, the vicinity, and the nighttime sky is minimized.

**VIS-7, page 192,** please revise the first sentence of the condition as follows so it is consistent with staff's standard condition language:

Prior to demolition of existing storage tanks, the project owner shall modify Unit 3 and 4 permanent lighting, such that light bulbs and ~~the fronts of reflectors~~ are not visible from public viewing areas; lighting does not cause reflected glare; and illumination of the project, the vicinity, and the nighttime sky is minimized.

**Page 195, Laws, Ordinances, Regulations, and Standards, Visual Resources:** Please make the following changes to accurately characterize the applicability to the project of the City of Manhattan Beach LORS.

Applicable Law column: City of Manhattan Beach ~~Land Use Policies and Goals~~ General Plan

Description column: ~~Provides goals and requirements pertaining to the appearance and enhancement of visual quality in the residences adjacent to the plant. The policies of the City of Manhattan Beach do not apply to the project. However, a General Plan policy and goal indicate the City's intent with regard to the potentially affected Manhattan Beach residential area south of the project site.~~

## WASTE MANAGEMENT

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Page 201 under MITIGATION, the following sentence should be corrected as shown below:

### MITIGATION:

- ☑ The Project Owner shall prepare a waste management plan. Condition: **WASTE-3**.
- ☑ The Project Owner shall report any potential enforcement action related to waste management. Condition: **WASTE-4-2**.

Page 201 under **CONDITIONS OF CERTIFICATION**, conditions **WASTE-3** and **WASTE-6** include a specification that plans shall be submitted to the LA County Department of Hazardous Materials. This does not reflect staff's latest version of these conditions; however, the difference is insignificant and both versions are correct. If the committee wishes to use staff's version the corrected **WASTE-3** and **WASTE-6** are provided below:

### WASTE MANAGEMENT PLAN

**WASTE-3:** Prior to the start of both site mobilization and project operation, the project owner shall prepare and submit to the ~~LA County Department of Hazardous Materials for review and comment and to the CPM for review and approval, and to local agencies, if applicable, for review and comment,~~ a waste management plan for all wastes generated during construction and operation of the facility, respectively. The plans shall contain, at a minimum, the following:

- A description of all waste streams, including projections of frequency, amounts generated and hazard classifications; and
- Methods of managing each waste, including storage, treatment methods and companies contracted with for treatment services, waste testing methods to assure correct classification, methods of transportation, disposal requirements and sites, and recycling and waste minimization/reduction plans.

**Verification:** No less than 30 days prior to the start of site mobilization, the project owner shall submit the construction waste management plan to the Los Angeles County Department of Hazardous Materials and the CPM. The operation waste management plan shall be submitted no less than 30 days prior to the start of project operation. The project owner shall submit any required revisions within 20 days of notification by the CPM (or mutually agreed upon date). In the Annual Compliance Reports, the project owner shall document the actual waste management methods used during the year compared to planned management methods.

### CONTAMINATED SOIL EXCAVATION

**WASTE-5:** If potentially contaminated soil is unearthed during excavation at either the proposed site or linear facilities as evidenced by discoloration, odor, detection by handheld instruments, or other signs, the Registered Professional Engineer

or Geologist shall inspect the site, determine the need for sampling to confirm the nature and extent of contamination, and file a written report to the project owner and CPM stating the recommended course of action. Depending on the nature and extent of contamination, the Registered Professional Engineer or Geologist shall have the authority to temporarily suspend construction activity at that location for the protection of workers or the public. If, in the opinion of the Registered Professional Engineer or Geologist, significant remediation may be required, the project owner shall contact representatives of ~~the LA County Department of Hazardous Materials,~~ the Los Angeles Regional Water Quality Control Board, and the Glendale Regional Office of the California Department of Toxic Substances Control, the CPM, and other local agencies, if applicable, for guidance and possible oversight.

**Verification:** The project owner shall submit any reports filed by the Registered Professional Engineer or Geologist to the CPM and the City of El Segundo Fire Department within 5 days of their receipt. The project owner shall notify the CPM within 24 hours of any orders issued to halt construction.

## **REMEDIAL INVESTIGATION WORKPLAN**

**WASTE-6:** Before demolition of either the fuel oil tanks or the existing generator buildings and any other building, respectively, the project owner shall prepare a Remedial Investigation Workplan (RI Workplan). This plan shall include a detailed site characterization plan with soil and groundwater sampling and analysis to determine the extent and nature of contamination existing beneath these structures. The RI Workplan shall be provided to the ~~Los Angeles County Fire Department,~~ the Glendale Regional Office of the California Department of Toxic Substances Control, the Los Angeles Regional Water Quality Control, the City of El Segundo Fire Department, and other local agencies, if applicable, for review and comment, and to the CEC CPM for review and approval. If contaminated soil or groundwater is found to exist, the project owner shall contact representatives of the above-named agencies for further guidance and possible oversight. In no event shall the project owner proceed with site preparation or construction activities at any location on the site where hazardous waste contamination is found to be present until that location is either remediated or shown to pose an insignificant risk to humans and the environment as demonstrated to the satisfaction of the LARWQCB, DTSC, and the CPM.

**Verification:** At least sixty (60) days prior to commencement of fuel tank demolition or structure demolition, respectively, the project owner shall provide the RI Workplan to the Los Angeles County Fire Department, the Glendale Regional Office of the California Department of Toxic Substances Control, the Los Angeles Regional Water Quality Control Board, and the CEC CPM. Within thirty (30) days of completion of the sampling and analysis and prior to the initiation of any construction activities, the project owner shall provide the results of the sampling and analysis to the ~~Los Angeles County Fire Department,~~ the Glendale Regional Office of the California Department of Toxic Substances Control, the Los Angeles Regional Water Quality Control, the City of El Segundo Fire Department, other local agencies, if applicable, and the CPM for review and guidance on possible remediation.