

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:

**EL SEGUNDO ENERGY CENTER;
EL SEGUNDO ENERGY CENTER LLC**

Docket No. 00-AFC-14C

**EL SEGUNDO ENERGY CENTER LLC 'S
RESPONSE TO STAFF'S REPORT AND
RECOMMENDATION ON COMPLAINT**

**EL SEGUNDO ENERGY CENTER LLC 'S RESPONSE TO
STAFF'S REPORT AND RECOMMENDATION ON COMPLAINT**

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I. INTRODUCTION

El Segundo Energy Center LLC (“ESECL” or “Project Owner”) herein submits comments to the report issued by the California Energy Commission (“CEC” or “Commission”) Staff regarding the complaint filed on July 3, 2012 in the compliance proceeding for the El Segundo Energy Center project (“ESEC” or “Project”),¹ 00-AFC-14C. CEC Staff conducted an investigation into the complaint and issued its report and recommendation on August 2, 2012 (“Staff Report”). Pursuant to Title 20, California Code of Regulations section 1237(d), comments may be made by any person, including the Project Owner, within 14 days of the issuance of the Staff Report or not later than August 16, 2012.

The complaint alleges various violations of Conditions of Certification (“COCs”) contained within the CEC’s final decision on the ESEC Application for Certification (“Final

¹ The Project was originally filed as the “El Segundo Power Redevelopment” project; however, the Commission approved the change in name to El Segundo Energy Center project on August 9, 2012. All references in these comments refer to the new name for El Segundo Energy Center.

Decision”).² Following review of the complaint and the Staff Report, and based on its own evaluation of the current construction, ESECL sets forth herein the areas where it will make modifications to comport with the Staff Report’s conclusions or recommendations. Additionally, there are certain key areas where agreement may be reached with the complainants on a path going forward. Lastly, with respect to certain allegations in the complaint, ESECL must respectfully disagree with Staff’s conclusions.

II. OVERVIEW OF ISSUES AND PROJECT OWNER POSITION

The complaint can be organized into seven allegations.³ These appear below along with short annotations as to CEC Staff’s position and ESECL’s position.

- 1. Project Owner has not acted in good faith to adhere to Final Decision requirements related to the 45th Street berm and southern property perimeter.**
 - a. **CEC Staff:** No action recommended at this time.
 - b. **ESECL:** Disagrees with accuracy of allegation.

- 2. The southern perimeter fence is in an improper location.**
 - a. **CEC Staff:** Finds fence to be in non-compliant position
 - b. **ESECL:** Willing to move the location of the fence several feet north, while working with the interested parties on a location that meets the COC and seek CPM review and approval. ESECL, however, is firm that no walking path should be provided for safety reasons as the walking path would end and not tie in with the area along the gasoline station at the corner of 45th Street and Vista Del Mar Boulevard.

² ESEC was originally approved on February 2, 2005. Modifications to the Project have been approved twice, first on June 30, 2010 and again on August 9, 2012. References to the “Final Decision” reflect the Project as originally approved and subsequently modified.

³ The Staff Report identified six allegations. Allegation 1 in these comments is additional to CEC Staff’s six allegations.

3. Project Owner installed unauthorized retaining walls in the south face of the 45th Street berm.

- a. **CEC Staff:** Finds retaining walls to be non-compliant.
- b. **ESECL:** Retaining wall is not a violation, but ESECL is willing to remove if engineering analysis can show that subject palm trees and water valve can be preserved. Proposes action for ESECL to submit report of an investigation into options for CPM review and approval.

4. Project Owner has not met timing requirements related to landscaping.

- a. **CEC Staff:** Finds this allegation to lack merit.
- b. **ESECL:** Concurs with CEC Staff.

5. An unauthorized concrete spillway was installed on top of the 45th Street berm.

- a. **CEC Staff:** Finds spillway to be non-compliant.
- b. **ESECL:** Will remove spillway. The installation was properly authorized, but ESECL acknowledges that the process that led to it being installed should have been handled differently.

6. There is an unauthorized road inside of the southern perimeter fence.

- a. **CEC Staff:** Does not reach conclusion on security path.
- b. **ESECL:** Believes the security path conforms to the Final Decision and is necessary to meet current power plant security requirements.

7. There is non-compliant lighting installed along the southern perimeter of the property.

- a. **CEC Staff:** Disagrees with allegation.
- b. **ESECL:** Concurs with CEC Staff.

Below, ESECL provides background and historical information regarding the dynamics of the southern perimeter and 45th Street area and responds to each allegation. In some cases, the proceeding record does not precisely delineate Project details relevant to some of the allegations. In other instances, the Final Decision specifically left the final details to be decided during compliance.

III. HISTORY AND BACKGROUND OF 45TH STREET ISSUES AND CONDITIONS

ESEC is located in an urban area of the greater Los Angeles Region, on the border between the City of El Segundo and the City of Manhattan Beach. The southern property line of the Project abuts 45th Street in the City of Manhattan Beach and is the border between the two cities in that area. Intervenors and participants in the Application for Certification (“AFC”) proceeding included residents and officials from both cities, however, some of the most active and interested parties to the proceeding were those living on or near 45th Street, including the complainants.

The southern end of the Project site has historically contained two large fuel oil storage tanks (“FOSTs”). The new ESEC power block is being built at the very northern end of the property and is removed from the 45th Street community. The FOST portion of the property (frequently referred to as the “tank farm” in many AFC proceeding documents and in the Final Decision) is being used to support ESEC construction activities, including staging and laydown. When the Project is complete, final work will be done on this southern area to convert it into a parking area for the property.

As a result of the community’s participation in the AFC proceeding, specific COCs were adopted, which guaranteed numerous enhancements and improvements along the 45th Street/ southern property line and helped ensure that construction activities would not adversely and improperly disturb residents along 45th Street. The primary special features and COCs that relate to the 45th Street property line can be summarized as:

1. Installation of a landscaped berm along the southern property line (“45th Street berm”) that would screen views of the power plant property. (COCs: VIS-1, VIS-2, VIS-9, NOISE-8)
2. Restrictions on time of construction and demolition and specific noise levels permitted near the southern property line. (COC: NOISE-8)
3. Appointment of a landscaping committee to make final decisions on the details of the perimeter landscaping of the property, including along 45th Street. (COC: VIS-2)

4. A requirement for temporary landscaping early in the Project construction schedule that would be compatible with final landscaping. (COC: VIS-9)
5. Other lighting and noise restrictions related to permanent operations (COCs: LAND-3, VIS-1, VIS-6, VIS-7, NOISE-2, NOISE-4, NOISE-6, NOISE-7, TRANS-6)
6. Inclusion of final specific plans for the tank farm area within the Project scope. (COCs: LAND-5, LAND-6, NOISE-6, VIS-2)

As one can surmise from the above list, ESEC contains extensive enhancements and concessions embodied in COCs that help ensure the Project has no significant impacts on the community. ESECL cannot emphasize enough the commitment it has had, and continues to have, to fulfill these requirements and to be a good neighbor. It maintains a Project question/complaint hotline and responds promptly to noise and other complaints recorded on the hotline, as well as to those complaints submitted directly to ESECL, whether applicable to ESEC construction activities or existing plant operations. It has maintained extensive community liaison to all of the Project's neighbors and to the civic leaders and managers of El Segundo and Manhattan Beach. Through such community feedback, ESECL strives to timely resolve any complaints and eliminate the occurrence of any future complaints. The issues presented in the present complaint, in part, reflect the complexity of constructing a major infrastructure project in a dense, busy urban area. The concerns and issues of the complainants are understandable and ESECL remains fully committed to doing what it can do, within the limits of reasonableness, to ameliorate their concerns. ESECL also remains fully committed to meeting all requirements of the Project under the law, including the requirements in the Final Decision.

IV. ESECL'S RESPONSES TO THE ALLEGATIONS

- A. Allegation #1: Project owner has not acted in good faith to adhere to Final Decision requirements related to the 45th Street berm and southern property perimeter.**

ESECL strongly disagrees with this allegation. ESECL has, at all times, required that all of its employees, contractors and agents conduct themselves in a manner fully compliant with all applicable laws and regulations, including, specifically, the requirements of the Final Decision.

Further, ESECL has invested and continues to invest significant time and resources to ensure compliance with the Final Decision and COCs. All actions taken and all features installed or constructed were approved by either the Chief Building Official or the CPM and at no time has ESECL constructed a component or taken an action that it was not confident was in conformity with the Final Decision. The parent company to ESECL, NRG Energy, Inc., enforces a strict policy of compliance with all laws and regulations and treats all incidents of non-compliance seriously. ESECL has also treated every complaint or concern received with the utmost urgency and professionalism. Representatives of ESECL have met with community members on numerous occasions and are committed to maintaining good relations.

ESECL has acted in good faith at all times to adhere to the requirements of the Final Decision and will continue to do so.

B. Allegation #2: The southern perimeter fence is in an improper location.

ESECL disagrees that the current location of the fence is improper and not authorized under the Final Decision. However, the Project Owner suggest that there are varying possible final locations of the fence conceivable under the Final Decision.

Nevertheless, to address this concern, ESECL is willing to set the fence back from the 45th Street curb several feet to allow for low level landscaping to be placed up to the curb, as depicted in some renderings in the record of the AFC proceeding. ESECL does not agree that a paved or smooth walking surface is now necessary within the set back area. Safety and liability issues associated with encouraging people to walk along the northern side of 45th Street were

raised in the permitting process.⁴

ESECL is prepared to present evidence from the Final Decision record and new testimony regarding the safety concerns that still exist and believes that the Final Decision cannot be seen to have authorized a sidewalk or other pedestrian walkway along the north side of 45th Street.

C. Allegation #3: Project owner installed unauthorized retaining walls in the south face of the 45th Street berm.

ESECL agrees that the retaining wall currently located at the south face of the 45th Street berm was not shown in any renderings. The retaining wall arose as a solution to two unanticipated conditions:

1) Local citizens (including the complainants) wanted to preserve the existing palm trees along 45th Street. This was not raised during the permitting process or during the compliance phase when final landscaping was being determined by the Landscaping Committee. During discussions with neighbors, it became apparent to them that the palm trees in the rendering were not the existing palm trees, but rather new palms planted as part of the implementation of the 45th Street berm. Once this request was made, however, ESECL had several meetings with the requesting parties. Significant concern was raised about submerging a portion of the palm tree root stock under the soil of the slope of the 45th Street berm. ESECL consulted with the City of Manhattan Beach arborist in January 2012 regarding a recommended setback from the palm tree root stock; a six-foot setback was recommended. The retaining wall embedded in the 45th Street berm became a way to retain the slope of the berm as depicted in renderings and the berm

⁴ Even one of the complainants noted during the AFC proceeding that the failure of a sidewalk to be installed adjacent to the gas station/convenience store at the top of the 45th Street hill made installing a sidewalk along the Project property dangerous and not a good idea, as it would encourage people to walk into the street to reach eventually reach another designated pedestrian sidewalk or path.

concept plan provided in compliance with the Final Decision, and provided the recommended six-foot setback from the palm trees. Throughout the discussions with neighbors, it has always been ESECL's intent to meet the needs and wishes of the 45th Street community. We anticipated that the retaining wall could be softened with colored concrete and could be screened with plantings from the approved landscape palette.

2) ESECL learned that a large above ground potable water valve on the power plant property, near the site of the retaining wall, belongs to the City of Manhattan Beach and was not feasible to relocate. As a result, pulling the 45th Street south berm slope further away to the north was necessary to avoid the water valve. The retaining wall in the 45th Street berm installed to protect the palm trees also resolved this issue.

ESECL believes that the retaining wall was within the scope of final design characteristics of the Final Decision and serves necessary and valued purposes (preserving the palm trees and eliminating interference with the water valve). ESECL, however, is willing to remove the retaining wall if an engineering analysis demonstrates that a steeper slope on the south face of the 45th Street berm would comply with engineering standards.

ESECL proposes that it be required to conduct and submit the results of an investigation into the feasibility on increasing slope steepness as a way to eliminate the retaining wall installed in the 45th Street berm. ESECL would submit this report to interested parties for comment and to the CPM to consider those comments and make a decision on the 45th Street berm retaining wall.

D. Allegation #4: Project Owner has not met timing requirements related to landscaping.

ESEC was required to implement temporary landscaping during construction (COC: VIS-9) and was also required to commence construction of the 45th Street berm at the time it began use of the tank farm (COC: VIS-9). ESECL has ensured that these requirements have been met.

A temporary landscaping plan was approved and is being implemented. ESECL began the effort to build the 45th Street berm concurrent with use of the tank farm.

E. Allegation #5: An unauthorized concrete spillway was installed on top of the 45th Street berm.

ESECL believes the concrete spillway was installed with proper authorization from the CEC and its representatives, but acknowledges that more could have and should have been done to vet this proposal with the community. ESECL regrets the visual and aesthetic concerns that the spillway has created and has taken steps to ensure any such future design decisions that might invoke visual or aesthetic issues be raised in a manner such that the full visual impacts are understood to the CPM and community.

ESECL is willing to remove the spillway. It was installed by ESEC contractors, pursuant to CPM authorization, to ameliorate consequences of rare storm events. ESECL has since conducted further study of the probable consequences of such extreme storm events and can now support the conclusion that the spillway is redundant and not required.

F. Allegation #6: There is an unauthorized road inside of the southern perimeter fence.

ESECL disagrees that the narrow perimeter path inside the southern perimeter fence is a “road” and disagrees that it is beyond the scope of the Final Decision. Further, ESECL believes the security and maintenance path to be a necessity because the nature of the landscaped berm will greatly reduce the ability to monitor and keep secure the perimeter of the power plant. Further, ESECL believes the small path, inside the fence, does not present significant visual changes or impacts. For these reasons, ESECL believes the path should be kept and that the Commission should recognize the necessity of the path and its compliance with the Final Decision.

ESECL is prepared to present security and visual testimony at any hearing called by the Commission on this allegation and is hopeful that the complainants can agree to accept the importance and value of the security path as part of the overall resolution to the complaint. It is ESECL's intent to visually screen the path using landscaping from the approved landscape palette.

G. Allegation #7: There is non-compliant lighting installed along the southern perimeter of the property.

The lighting installed along 45th Street is the minimum required to provide perimeter safety and power plant security. ESECL agrees with the findings of CEC Staff regarding this allegation that the lighting is temporary and should remain during construction. If the CPM determines that the lighting complies with the Final Decision requirements for shrouded lighting that reduces side glare, the CPM shall allow the temporary lighting to be retained as permanent.

V. CONCLUSION

ESECL, again, wishes to express its commitment to adhere to the requirements of the Final Decision and to work cooperatively with all of members of the communities surrounding the Project. ESECL hopes that its proposed resolutions for each of the above allegations are acceptable to CEC Staff and to the complainants such that a hearing before the Commission is not necessary. ESECL will work with the community to attempt to reach such an agreement.

Dated: August 15, 2012



By: _____

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