



March 10, 2013

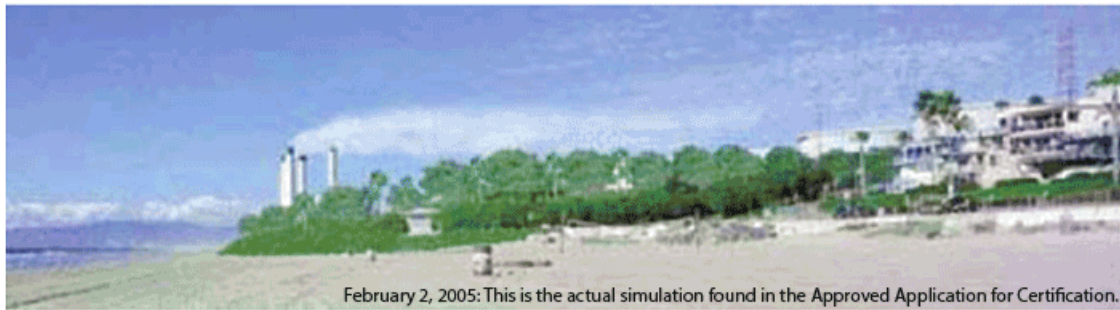
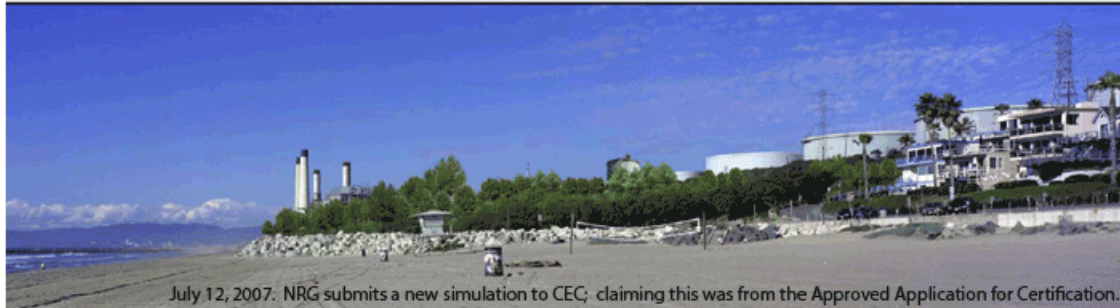
**DOLEN'S APPEAL OF THE COMMITTEE'S ORDER DISMISSING COMPLAINT
DOCKET NO. 12-CAI-05**

Pursuant to section 1237, subsection (f) of Title 20, California Code of Regulations, I hereby appeal to the California Energy Commission in the matter of my complaint against El Segundo Redevelopment Project, Docket Number 12-CAI-05. I request the Commission set aside the Order Dismissing Complaint which was docketed February 25, 2013 and re-issue a decision which holds the project owner, NRG, accountable for their documented Title 20 violations.

As mentioned in my original complaint, even the Mayor of Manhattan Beach had stated in writing that *"Based on the simulated views provided by NRG, the community was led to believe that after the tank removal, the plant would be fully camouflaged."* I find it ironic that the Commission can claim that's not true, while actual residents of Manhattan Beach, including amongst the local government, feel otherwise. Clearly there is a disconnect and with all due respect, would not locals of a given area naturally be a better judge of such, versus those whom reside over 300 miles away? In fact, the Commission even states in their response that a propaganda example (Figure D, ESEC flyer) was never presented to them, yet it was presented to locals. Logically that begs the question... is it just for the Commission to make such a verdict, when they were not exposed to all of the same things the community was?

While it's true that the Commission's job is to review the regulatory filings, taking a "see no evil, hear no evil" approach by saying that they will not comment on things which were not part of the licensing and compliance process is setting a dangerous precedent. It opens the floodgates for power plant owners to propagandize to local residents however they want (even deceptively) and doing so is just peachy keen in the eyes of the Commission, since apparently those local ground efforts are not *"part of the licensing or compliance process. Thus, Energy Commission staff has no comments."* In other words, as long as NRG's regulatory filings are correct, apparently what they communicate to locals is no more regulated than the Wild West was a couple centuries ago.

But setting all that aside for a moment, the real conundrum is that NRG's regulatory filings were not correct and the Commission is not taking action about that, either. Some things within my complaint are in no way subjective, but rather black and white documented facts of noncompliance. One such example happens to be the KOP as shown in Figure J:



The Staff Report says *“Staff agrees that the top simulated photo of Complaint Figure J is not from the 2005.”* Yet at the same time, the *“Staff concludes that the visual depictions are not misleading”* in the Order Dismissing Complaint. How can both of these statements be true at the same time? The Staff clearly admits that the simulation is different from the 2005 filing (even though NRG stated otherwise) and *that* is not misleading? You can’t have it both ways.

However what’s even more troubling, and something I will absolutely not back down from, is the Commission ignoring the enforcement of Title 20 in regards to the parking lot. As documented in my complaint – and to ensure there was no confusion I expanded upon it in my follow-up comments submitted January 31st – the parking lot, as being constructed, is in violation of Title 20. This is not a matter of an opinion, but a documented fact which cannot be disputed.

NRG clearly violated Title 20 of the California Code of Regulations by not complying with the requirements set forth in the “Information Requirements for an Application,” Appendix B (a)(1)(D), which requires the following:

(D) A full-page color photographic reproduction depicting the visual appearance of the site prior to construction, and a full-page color simulation or artist's rendering of the site and all project components at the site, after construction.

The parking lot was a project component at the site, yet it was not visually depicted in the photographic reproductions/simulations. Regardless of which KOPs you reference, you will find that it does not appear in a single one of their simulations. This is a fact which cannot be disputed.

Therefore, in order for NRG to construct this parking lot and remain compliant with Title 20, it would mean that the parking lot cannot be visible from any of the KOPs. If this project component were constructed in a manner which is visible, that would violate the aforementioned (a)(1)(D) since it was not visually depicted in any of the photographic reproductions filed with the State of California, which the public relied upon.

Within the Staff's response to Figures I and J of the complaint, it was said:

"Per these plans, the height of the earthen berm will be higher than what is depicted in these figures and will further screen any vehicles from view. Staff believes the increased height of the re-engineered berm will change the height of the proposed trees and shrubs potentially shielding more of the facility and overflow parking area from view."

Shielding "more" of the parking lot from view is still in violation of Title 20. In order for NRG to be compliant, 100% of the parking lot would need to be shielded from view, because that was what they portrayed in their photographic reproductions (since no parking lot was visible whatsoever).

Make no mistake about it, as stated in my complaint, I fully acknowledge and agree with the allowed uses for Parcel 2 as indicated per the Application and Amended Decision. However, that does not excuse the fact that NRG only fulfilled half the requirements for this particular component; mentioning it in written form, but completely neglecting to include it in their simulations. Title 20 doesn't require one or the other, it requires both. Since they didn't visually depict it, the public was led to believe it would not be visible from the KOPs.

Therefore if NRG wishes to continue construction of the parking lot within Parcel 2, they must do so in a manner which remains compliant with Title 20. To accomplish this, my request is quite reasonable; they can propose a solution which camouflages it so it is not visible (as they depicted in their KOPs). Some ideas to accomplish this include but are not limited to lowering the elevation of the parking lot (and/or raising the elevation of its perimeter) as well as the types of trees and the exact tree canopy design and maintenance plan surrounding and within the parking lot. However as it stands now, their latest filings demonstrate otherwise, and note that those filings are even more recent than the date of my complaint (45th Street Berm Drawings to Support Joint Statement of Agreement, posted December 10th, 2012, and NRG's subsequent responses posted thereafter). Furthermore, from my understanding and communications thus far, the City of Manhattan Beach has very limited say in the landscaping, other than sharing opinions on the landscaping "palates" which are used along 45th street. Simply put, the modifications which would be needed to shield the parking lot from view, Manhattan Beach does not

have the power to impose. I am requesting the Commission to enforce Title 20. If NRG wishes to have this parking lot, the Commission should require modifications to shield its view, otherwise Title 20 is being violated.

The Commission's "Values Statement" says *"The California Energy Commission's highest responsibility is to the people of California. We will strive to conduct business in a manner that results in maximum public benefit."* How is allowing NRG to violate Title 20 serving the people of California and resulting in maximum public benefit? Perhaps the public shareholders of NRG stock are benefiting from such laissez-faire, but certainly not the public at large.

I request an appeal and for the complaints to be examined. While I understand some matters in my complaint may be subjective in nature, others are not. When it comes to the documented black and white Title 20 violations (i.e. parking lot) I will not rest until the law is followed and enforced.

Sincerely,

Michael Dolen