



770 L Street, Suite 800  
Sacramento, California 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

JOHN A. MCKINSEY  
Direct (916) 319-4746  
jamckinsey@stoel.com

November 1, 2005

**VIA EMAIL AND HAND DELIVERY**

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

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

Dear Mr. Pryor

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

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

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

Oregon  
Washington  
California  
Utah  
Idaho



Marc S. Pryor  
November 1, 2005  
Page 2

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

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

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

## **II. CEC STAFF COMMENTS**

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

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

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

