

MINUTE ITEM

This Calendar Item No. 42 was approved as
Minute Item No. 42 by the California State Lands
Commission by a vote of 3 to 0 at its
02-05-07 meeting.

**Minute Item
42**

**02/05/07
PRC 858
A. Scott**

**EL SEGUNDO POWER LLC AND
EL SEGUNDO POWER II LLC
(APPLICANT)**

Regular Item 42 . The Commission listened to a staff report and testimony from the public concerning lease applications to El Segundo Power LLC and El Segundo Power II LLC, and EAS Huntington Beach LLC. The Commission approved the leases as presented by a vote of 3-0.

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PRC 858

A. Scott

GENERAL LEASE - INDUSTRIAL USE

APPLICANT:

El Segundo Power, LLC and El Segundo Power II, LLC
c/o NRG Energy
4600 Carlsbad Boulevard
Carlsbad, California 92008

AREA, LAND TYPE, AND LOCATION:

32.14 acres, more or less, of sovereign lands in Santa Monica Bay, city of El Segundo, Los Angeles County.

AUTHORIZED USE:

Continued use and maintenance of two pairs of existing sea water intake and outfall pipelines to be used as part of an existing upland electric generating plant. The pipelines are used as components of a once through cooling system associated with the upland El Segundo Power Plant.

LEASE TERM:

30 years, beginning December 14, 2006, provided however, that the Commission reserves the right to reduce the term of the lease to 20 years if the redevelopment of the upland power plant authorized by the California Energy Commission under Application for Certification Docket No. 00-AFC-14 is not begun on or before the deadline specified in Title 20, California Code of Regulations, Chapter 5, Section 1720.3 Construction Deadline.

CONSIDERATION:

First year's rent of \$350,000, referred to as the "Base Rent". The "Base Rent" to be adjusted annually by the Consumer Price Index (CPI) for All Urban Consumers, Los Angeles-Riverside-Orange County, CA. The State reserves the right to adjust the "Base Rent" periodically during the term of the lease, as provided in the lease.

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SPECIFIC LEASE PROVISIONS:

Insurance:

Not less than \$2,000,000 combined single limit.

Bond:

\$500,000

Other:

- 1) The authorized facilities are to be used exclusively for the intake and discharge of cooling water for an upland electric generating plant and for the discharge of water from an existing permitted upland desalination test facility. No other uses are allowed without the prior written approval of the Commission, specifically the intake or discharge of water from any future desalination project.
- 2) The Commission reserves the right to modify the Lease to require El Segundo Power I, LLC and El Segundo Power II, LLC (El Segundo) to implement an alternative, environmentally superior technology, such as an alternative cooling system, should such system become feasible and be required by another permitting Federal or State agency.
- 3) El Segundo is required to provide an annual detailed written report to the Commission identifying conditions imposed upon it by other agencies pursuant to Federal and State laws including the Federal Clean Water Act, section 316(b) and California's Porter-Cologne Water Quality Act. The report shall indicate and provide evidence of El Segundo's full compliance or engagement in an agency-directed process to achieve full compliance with the identified imposed conditions. The Commission will conduct a public hearing five years after the effective date of the lease in order to publicly review and evaluate El Segundo's compliance with the terms of the lease.
- 4) The annual reports will be available to the public on the Commission's website.

OTHER PERTINENT INFORMATION:

1. El Segundo owns the uplands adjoining the lease premises.
2. The Commission has expressed concerns regarding Once-Through Cooling (OTC) of power plants and the environmental impacts to the waters of California that maybe caused by OTC systems. As a result of the Commission's concerns, this lease contains special language that will assure that El Segundo will be in compliance with various regulations

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governing OTC. The lease requires compliance with both Federal and State regulations including the Clean Water Act, Section 316(b) and California's Porter-Cologne Water Quality Control Act. The lease also will allow the Commission to modify the terms and conditions of the lease should that become necessary based on changes to the technology of cooling for power plants that maybe required in their authorized capacities by other governmental regulatory agencies.

3. The lease issued for the existing improvements expired on October 26, 2002, and is considered to be in holdover pending the processing of an application for a replacement lease. The rent for the original lease was a one-time payment of \$2,100 for the 49-year term of the lease. The replacement lease is proposed to begin on December 14, 2006. El Segundo has agreed to pay rent in the amount of \$806,495 for the holdover period of October 27, 2002, through December 13, 2006.
4. Portions of the upland electric generating facilities are in the process of being modernized to increase electric production with a more efficient and less environmentally damaging generating system. A 30-year term is being proposed for this lease because of the proposed modernization of the facility and coincides with the anticipated design life of the facilities. The modification of the plant has received approval and certification by the California Energy Commission (CEC).
5. The National Pollutant Discharge Elimination System (NPDES) Permit CA0001147 issued by the Los Angeles Regional Water Quality Control Board (Regional Board) in 2000 continues to be in effect. Timely application was made and accepted by the Regional Board for a replacement permit, thereby extending the 2000 permit beyond its 2005 expiration date until such time as a new NPDES permit is approved by the Board.
6. There is an existing permitted desalination test facility located on the upland at this location. Some amount of brine may be discharged through the outfall pipelines. However, no additional amount of brine beyond that from the permitted test facility shall be disposed of in the cooling water system unless prior written approval of the Commission is received.

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7. **California Energy Commission:**

The California Energy Commission (CEC) is the State's primary energy policy and planning agency. In addition to forecasting energy needs, developing energy technologies and promoting energy efficiency, the CEC licenses thermal power plants having a capacity of 50 megawatts or more.

On February 2, 2005, the CEC adopted the El Segundo Power Redevelopment Project Application. The CEC required as part of its conditions of approval that El Segundo Power, among other things, contribute money to the Santa Monica Bay Restoration Commission (initially \$1,000,000 up to a maximum of \$5,000,000) to assess the condition of Santa Monica Bay, conduct a study to determine feasibility of an aquatic filter barrier at the intake structures, reduce the intake of water from 220 billion gallons per year to 127 billion gallons per year, have a valid NPDES Permit and achieve compliance with 316(b) of the Clean Water Act. El Segundo is in the process of complying with all of the above.

8. **State Water Resources Control Board and the Regional Water Quality Control Board:**

The State Water Resources Control Board (SWRCB) is developing a Statewide 316(b) Policy (Policy) with requirements that would apply to both new and existing OTC power plants. The requirements will be implemented through the National Pollutant Discharge Elimination System (NPDES) permitting process enforced by the SWRCB's Regional Water Quality Control Boards (Boards). The proposed Policy will be implemented on a statewide basis in order to assure consistency throughout the various Boards.

El Segundo has applied for the renewal of their NPDES Permit. The NPDES Permit issued in 2000 continues in effect pending the issuance of a new permit which is currently being drafted by the Los Angeles Board.

Pursuant to the terms of the proposed lease, El Segundo is required to be in compliance with all other requirements, both State and Federal, imposed upon them by authorized regulatory agencies. The terms of the proposed lease authorize the amendment of the lease to assure El Segundo's compliance with all other federal and state requirements.

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9. On February 2, 2005, the California Energy Commission (CEC) adopted the El Segundo Power Redevelopment Project Application (Docket No. 00-AFC14) under its certified regulatory program [Title 14, California Code of Regulations, section 15251 (c)].

Staff has reviewed the document and determined that the conditions, as specified in Title 14, California Code of Regulations, section 15253 (b), have been met for the Commission to use the environmental analysis document certified by the CEC as an EIR equivalent in order to comply with the requirements of the CEQA.

10. The CEC also adopted "Findings and Conditions" and "General Conditions Including Compliance Monitoring and Closure Plan", each of which is contained in the CEC's February, 2005, Decision (CEC-800-2005-001-CMF).
11. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

Regional Water Quality Board (NPDES Permit extended during processing of application to renew)
California Energy Commission

EXHIBITS:

- A. Site Map
- B. Land Description

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT AN ENVIRONMENTAL ANALYSIS DOCUMENT, CALIFORNIA ENERGY COMMISSION (CEC) EL SEGUNDO POWER REDEVELOPEMENT PROJECT APPLICATION (DOCKET NO. 00-AFC-14) WAS ADOPTED FOR THIS PROJECT BY THE CEC UNDER ITS CERTIFIED PROGRAM [TITLE 14, CALIFORNIA CODE OF

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REGULATIONS, SECTION 15251 (c)], AND THAT THE CALIFORNIA STATE LANDS COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION THEREIN AND CONCURS IN THE CEC'S DETERMINATION.

ADOPT THE FINDINGS AND CONDITIONS CONTAINED IN CEC-800-2005-001-CMF AS SUCH ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.

ADOPT THE GENERAL CONDITIONS INCLUDING COMPLIANCE MONITORING AND CLOSURE PLAN CONTAINED IN CEC-800-2005-001-CMF AS SUCH ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

ACKNOWLEDGE THAT LEASE NO. PRC 858.1 HAS BEEN IN HOLDOVER FOR THE PERIOD OF OCTOBER 27, 2002, THROUGH DECEMBER 13, 2006, AND ACCEPT \$806,495 AS RENT FOR THAT HOLDOVER PERIOD.

AUTHORIZE ISSUANCE TO EL SEGUNDO POWER, LLC AND EL SEGUNDO POWER II, LLC OF A GENERAL LEASE - INDUSTRIAL USE, BEGINNING DECEMBER 14, 2006, FOR A TERM OF 30 YEARS, WITH THE COMMISSION RESERVING THE RIGHT TO REDUCE THE TERM TO 20 YEARS IF CONSTRUCTION OF IMPROVEMENTS COVERED UNDER CEC DOCKET NO. 00-AFC-14 ARE NOT BEGUN ON OR BEFORE THE DEADLINE SPECIFIED IN TITLE 20, CALIFORNIA CODE OF REGULATIONS, CHAPTER 5, SECTION 1720.3 CONSTRUCTION DEADLINE, FOR THE CONTINUED USE AND MAINTENANCE OF TWO SETS OF INTAKE AND OUTFALL PIPELINES AS SHOWN ON THE LAND ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; A BASE RENT FOR THE FIRST YEAR OF THE LEASE IN THE AMOUNT OF \$350,000, WITH THE STATE RESERVING THE RIGHT TO ADJUST THE BASE RENT ANNUALLY BY THE CONSUMER

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PRICE INDEX AND FURTHER RESERVING THE RIGHT TO PERIODICALLY FIX A NEW BASE RENT DURING THE TERM OF THE LEASE, AS PROVIDED IN THE LEASE; COMBINED SINGLE LIMIT LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN \$2,000,000; SURETY BOND IN THE AMOUNT OF \$500,000.

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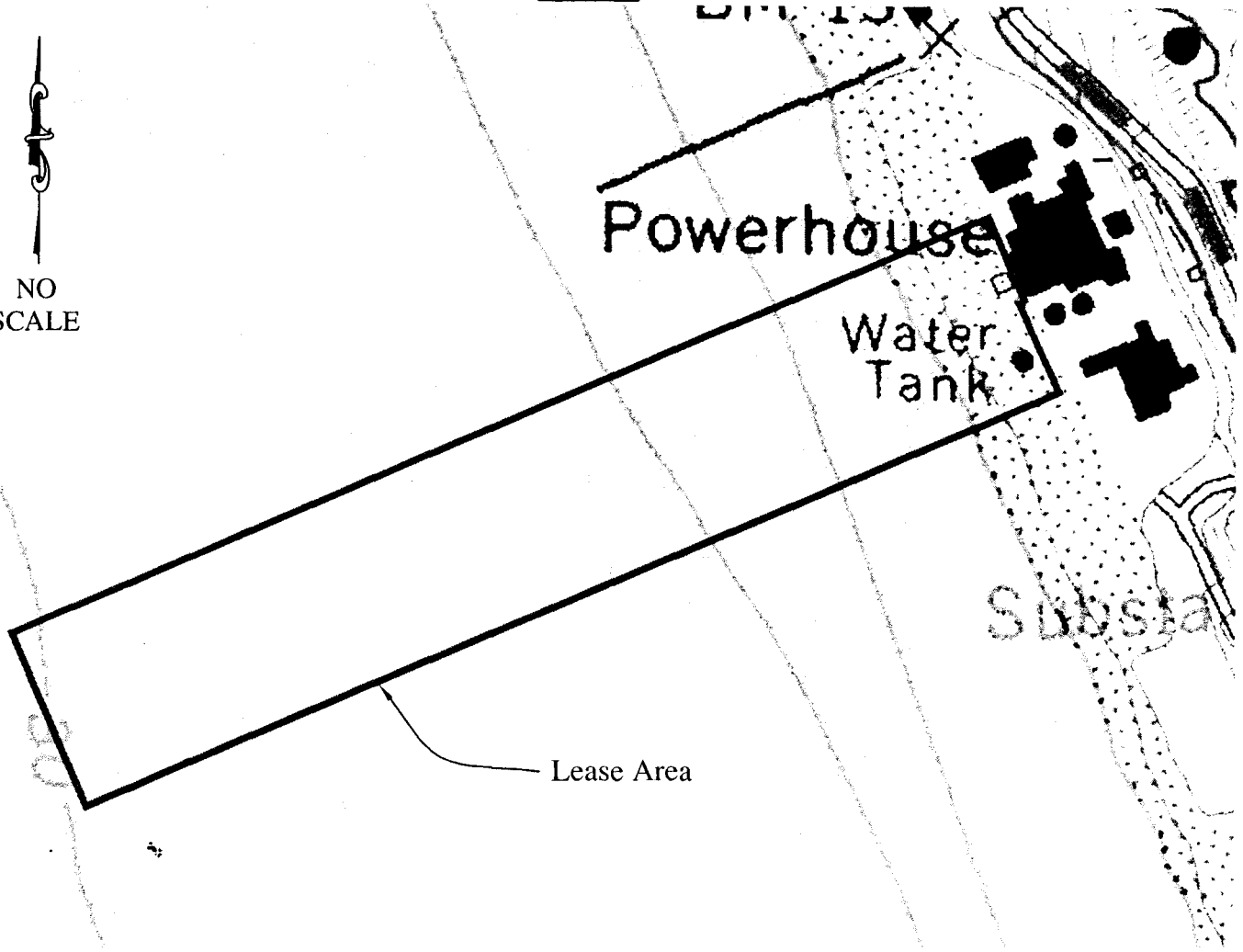
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SITE

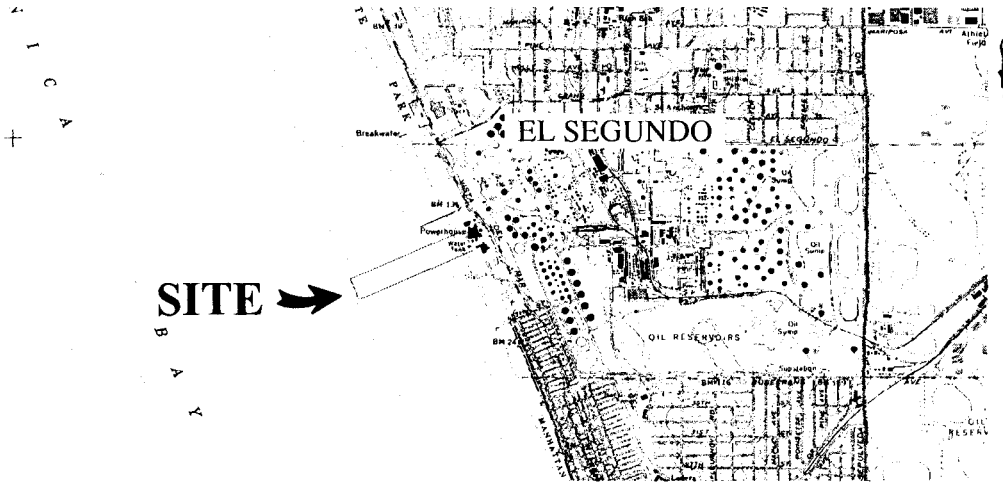
NO
SCALE



EL SEGUNDO POWER, LLC
UNDERGROUND CONDUITS AND WATER INTAKE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 858
EL SEGUNDO POWER, LLC
RIGHT OF WAY EASEMENT
CITY OF EL SEGUNDO
LOS ANGELES COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as a waiver or limitation of any State interest in the subject or any other property.

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EXHIBIT B

PRC 858

LAND DESCRIPTION

A parcel of tide and submerged land for a Right-of-Way easement in Santa Monica Bay, City of El Segundo, County of Los Angeles, State of California, described as follows:

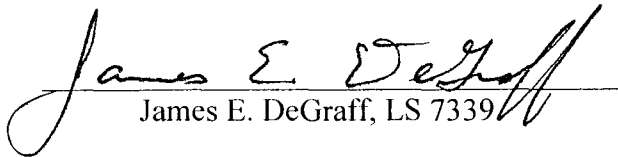
BEGINNING at the southwesterly comer of Lot 1, Tract 1314, as per map recorded in Book 20, Page 161 of Maps in the Office of the County Recorder of said County; thence the following six (6) courses:

- 1) N 22°52'30" W 250.00 feet along the southwesterly line of said Lot;
- 2) S 66°47'00" W 2800.00 feet at a right angle from the northeasterly line of said Lot;
- 3) S 23°13'00"E 500.00 feet parallel with the northeasterly line of said Lot;
- 4) N 66°47'00" E 2789.08 feet to the southeasterly line of Tract No. 2356, as per map recorded in Book 28, Pages 41 and 42 of Maps in the Office of said County Recorder;
- 5) N 24°42'00" W 256.99 feet along said southeasterly line;
- 6) N 90°00'00" E 17.50 feet to the point of beginning.

The Basis of Bearing is "West" as shown on the southerly line of Lot 2, on that certain map titled Tract No. 1314, filed in Map Book 20, Page 161, Office of the County Recorder, Los Angeles County.

END OF DESCRIPTION

Prepared December 1, 2006 by the California State Lands Commission Boundary Unit


James E. DeGraff, LS 7339



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