

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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San Francisco, CA 94102
(415) 703-5050



May 28, 2004

Paul B. Priest
MidAmerican Energy Holdings Company
P.O. Box 657
Des Moines, IA 50303-0657

Re: Request For Reconsideration
Public Works Case No. 2002-043
Salton Sea 6 Geothermal Power Plant Project

Dear Mr. Priest:

This is in response to your request on behalf of CE Obsidian, LLC¹ for reconsideration and withdrawal by the Department of Industrial Relations of the precedential public works coverage determination in the above-referenced matter. For the reasons described below, your request is denied.

On April 10, 2003, the Director of Industrial Relations issued a public works coverage determination ("Determination") finding that construction of the Salton Sea 6 Geothermal Power Plant ("Project") is a public work within the meaning of the California Labor Code if the Project receives public funding. The facts concerning the Project and the arguments of the various interested parties are fully set forth in the Determination and, therefore, they need not be repeated here. The finding of public works coverage was based primarily on the plain language of Public Utilities Code ("PU Code") section 399.14, subdivision (h).²

CE Obsidian appealed the Determination, whereupon a Decision on Appeal denying the appeal issued on June 26, 2003.³

¹ To the extent the Determination incorrectly identified the owners of the Project as CalEnergy, that misidentification was corrected in the Decision on Appeal and herein.

² "Construction, alteration, demolition, installation and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to section 383.5, including, but not limited to, work performed to qualify [sic], receive, or maintain production incentives or supplemental energy payments is 'public works' for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code." PU Code § 399.14(h).

³ In response to a second coverage request, this time filed by CE Obsidian on November 12, 2003, the Director issued a related public works coverage determination finding that, under the plain language of PU Code section 399.14, subdivision (h), maintenance work on an eligible renewable energy resource receiving incentive or supplemental energy payments pursuant to PU Code section 383.5 is not public work.

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Under Title 8, California Code of Regulations section 16001(a)(1), interested parties may request of the Director a public works coverage determination. An aggrieved interested party may file an administrative appeal. The decision on administrative appeal is subject to further review by the filing of a civil writ of review under Code of Civil Procedure section 1085. Here, both a determination and a decision on appeal have issued. No petition for writ of review has been filed. Because there is no provision for a request for reconsideration, the Director need not entertain your request.

Even if the Director were to entertain your request for reconsideration, there is no basis for withdrawal of the Determination. Neither your request nor the arguments submitted by counsel for CE Obsidian raise new facts or legal arguments that were not previously considered in making the Determination.⁴ The Determination does not make the Project a public work now. The Determination makes it one only upon it being awarded credits. (Determination Conclusion, pp. 7-8.) As it clearly states, the Determination is conditional upon the Project receiving public funding; if the Project receives no public funding or is ineligible to receive such funds, it would not, pursuant to the Determination, be deemed a public work for which prevailing wages must be paid.

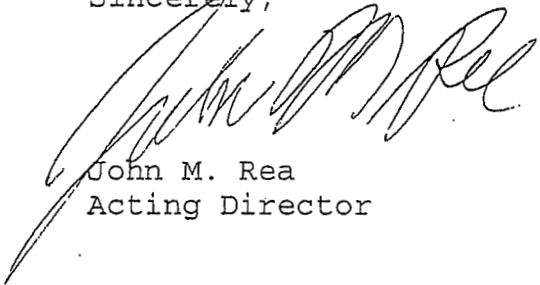
Please note that any project labor agreement between CE Obsidian and a labor organization is a contractual matter between those parties, and disagreements concerning the implementation of a project labor agreement must be resolved by the parties to that agreement, not by the Department. This is separate and apart from the statutory duty of this Department to enforce prevailing wage obligations on public works. The Department enforces those obligations, however, primarily as a result of the filing of a public works complaint with the Labor Commissioner's office. At this time, I am unaware of any such complaint on file with the Labor Commissioner.

⁴ In the course of reviewing your request for reconsideration, the California Energy Commission referenced statutory changes to the PU Code that changed the funding scheme for the energy incentives and supplemental payments at issue. SB 183 (statutes of 2003, Ch. 666), effective on January 1, 2004, provides that funding now emanates from statutes in the Public Resources Code rather than the PU Code. These statutory changes do not have direct bearing on this request

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For the reasons provided herein, your request for reconsideration and withdrawal of the above-referenced Determination is denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "John M. Rea". The signature is written in dark ink and is positioned above the typed name and title.

John M. Rea
Acting Director