

**CALENDAR ITEM
C107**

A 11

09/20/13

PRC 600.1

S 7

D. Brown

**CONSIDER WAIVER OF PENALTY AND PARTIAL REDUCTION
OF INTEREST DUE TO LATE PAYMENT OF RENT**

LESSEE

Phillips 66 Company
P.O. Box 4428
Houston, TX 77210

AREA, LAND TYPE, AND LOCATION:

16.726 acres, more or less, of filled and unfilled sovereign land in San Pablo Bay, town of Rodeo, Contra Costa County

AUTHORIZED USE:

Continued use and maintenance of a marine oil terminal

LEASE TERM:

30 years, beginning September 1, 2001

CONSIDERATION:

Base rent of \$287,628 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease. Current rent is \$294,330 per year.

OTHER PERTINENT INFORMATION

1. Phillips 66 Company (Phillips) was assigned Lease PRC 600.1 by ConocoPhillips after receiving authorization by the Commission on December 5, 2012. In anticipation of that transfer, staff billed Phillips on October 17, 2012, on Invoice 29870 for the \$294,330 rent for the year January 1, 2013, to December 31, 2013. As there were several leases in the overall transfer between ConocoPhillips and Phillips, staff had been working closely with Phillips to ensure the correct billing addresses.

Staff noted at the end of January, that Invoice 29870 had not been paid and sent a 30-day past due notice along with calculations for penalty and interest. Commission regulations state that a 5% penalty and 18% annual interest is to

CALENDAR ITEM NO. **C107** (CONT'D)

be accrued to all late payments. This resulted in a penalty of \$14,716.50 and interest of \$4,935.07 being assessed.

Upon receipt of this notice, Phillips immediately contacted staff and advised that the payment had been sent in mid-December and had apparently been lost in the mail. Staff provided Phillips with electronic fund transfer instructions and was immediately wired the payment including the penalty and interest of \$19,651.57.

Phillips has subsequently asked for relief from the penalty and interest asserting that the payment was lost in the mail. As noted above, this was one of several leases involved in an assignment from ConocoPhillips and all others have been paid in a timely manner. Staff has no reason to suspect that the payment was not mailed and subsequently lost in the postal system. That payment has not materialized and Phillips has issued a stop payment on the check. Additionally, to avoid such incidences in the future and at the suggestion of staff, Phillips will be making future payments by electronic fund transfer.

2. As the circumstances appear to be beyond the control of the Lessee, staff recommend that penalty be waived and that interest be reduced from the punitive 18% to the time value of the money for that period at 3% or \$822.51.

Authority: California Code of Regulations, Title 2, Division 3, Chapter 1, Article 1, Section 1911- Penalty and Interest

3. The staff recommends that the Commission find that the subject waiver of late payment penalty and reduced interest charges do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

CALENDAR ITEM NO. **C107** (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject waiver of late payment penalty and reduced interest charges are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not projects as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

Waive the late payment penalty and reduce the interest charges which were assessed on 2013 annual rental invoice 29870 to \$822.51 for Lease PRC 600.1.