

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE
EASTSHORE ENERGY CENTER IN HAYWARD
BY TIERRA ENERGY OF TEXAS

DOCKET No. 06-AFC-6
(AFC ACCEPTED 11/8/06)

NOTICE OF EVIDENTIARY HEARING DATES AND HEARING ORDER

PLEASE TAKE NOTICE that the Committee designated by the Energy Commission to conduct proceedings on the Application for Certification for the Eastshore Energy Center has scheduled an Evidentiary Hearing on the following dates:

MONDAY, December 17, 2007
10 am to 1 pm
2:30 pm to 5 pm
6 pm to 8 pm (Public Comment)

- and -

TUESDAY, December 18, 2007
10 am to 1 pm
2:30 pm to 7 pm

(NOTE: Hearing time may be extended to 7 pm if needed.)

Hayward City Hall Chambers
777 B Street
Hayward, CA 94541
Wheelchair Accessible
(Map Attached)

DOCKET 06-AFC-6	
DATE	DEC 04 2007
RECD.	DEC 04 2007

This Notice includes the list of witnesses for each topic (**Attachment A**) and the remaining schedule for the proceeding (**Attachment B**).

BACKGROUND

At the Prehearing Conference on November 26, 2007, Applicant, Staff, and Intervenors (“parties”) indicated they were ready to proceed with the Evidentiary Hearing.

With the exceptions of air quality, public health, land use, traffic and transportation, environmental justice, alternatives, local system effects, and noise, the majority of technical topics are undisputed.

The primary dispute regarding land use and traffic and transportation is focused on the potential impacts to aircraft flying less than 1,000 feet above the Project’s exhaust stacks near the Hayward Executive Airport. The Applicant has requested an “override” of applicable state and local laws on airspace safety arguing that (1) the Project would not cause adverse impacts to aviation and/or (2) certification of the Project is required for “public convenience and necessity” pursuant to Public Resources Code, section 25525. At the Prehearing Conference, we invited the parties to submit opening briefs by **December 7, 2007**, on the legal standard for determining whether “override” is appropriate in this case. The parties shall also have the opportunity to file post-hearing (reply) briefs to identify pertinent evidence in the record that would support their respective positions on the “override” issue.

Staff will sponsor witnesses from the Bay Area Air Quality Management District (BAAQMD) to authenticate the Final Determination of Compliance and to be available for cross-examination on air quality issues.

EVIDENTIARY HEARING PROCEDURES

The purpose of the Evidentiary Hearing is to establish the factual record necessary for a decision on the Project proposal. The record is developed by the presentation of sworn testimony and documentary evidence. As we announced at the Prehearing Conference, the parties shall file and serve written, sworn testimony as well as the qualifications of their witnesses to be received by **Friday, December 7, 2007**. (See, Cal. Code of Regs., tit.20, § 1224.) Testimony on undisputed topics shall be submitted by sworn declarations filed under penalty of perjury and offered into evidence by stipulation of the parties.

The parties' witnesses who appear in person shall be available for cross-examination. Each party sponsoring a witness shall establish the expert qualifications of the witness and ask the witness to summarize his or her prepared testimony before moving the testimony and relevant documents into evidence. At the conclusion of direct testimony, the witness may be cross-examined, followed by redirect and recross examination as appropriate. Multiple witnesses may testify as a panel, if warranted.

REQUIRED FILINGS

The parties shall provide electronic copies of their written testimony, witness qualifications, documentary evidence, and Exhibit Lists to the Proof of Service list for receipt by **3 p.m. on December 7, 2007**. Written testimony for each witness shall be numbered as an Exhibit. Printed copies of the Exhibits (in the two formats described in the Notice of Prehearing Conference) shall be received by the Hearing Officer no later than **3 p.m. on December 7, 2007**. One printed copy of any Exhibit that has not been previously docketed shall also be submitted to the Docket Unit.

The rules of evidence pertaining to the Evidentiary Hearing are governed by Sections 1212-1213 of the Commission's regulations. [Cal. Code of Regs., tit. 20, §§ 1212, 1213; see also § 1702 (h).]

The Applicant has the burden of presenting substantial evidence to support the findings and conclusions required for certification of the site and related facilities. [Cal. Code of Regs., tit. 20, § 1748(e).]

PUBLIC PARTICIPATION

Members of the public may participate at the Evidentiary Hearing by providing oral or written comments on the Project. For information on how to participate, contact the Energy Commission's Office of the Public Adviser at 1-916-654-4489 or 1-800-822-6228, or email at: [pao@energy.state.ca.us].

The deadline to file a Petition to Intervene in this proceeding was November 19, 2007. Robert Sarvey filed a Petition to Intervene on November 20, 2007. Although his petition was filed late, the Committee granted his Petition at the Prehearing Conference for the

limited purpose of allowing Mr. Sarvey to present testimony and proposed Conditions of Certification on the topic of air quality.

ADDITIONAL INFORMATION

If you have a disability and need assistance to participate, please contact Lourdes Quiroz at 1-916-654-5146 or e-mail at: lquiroz@energy.state.ca.us

Technical questions concerning the Project should be addressed to Bill Pfanner, the Staff Project Manager, at 1-916-654-4206 or e-mail at: bpfanner@energy.state.ca.us

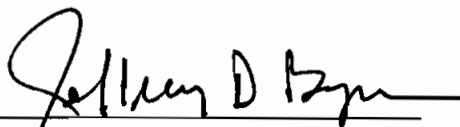
Questions of a legal or procedural nature should be directed to Susan Gefter, the Hearing Officer, at 1-916-654-3893 or e-mail at: sgefter@energy.state.ca.us

Media inquiries should be directed to Claudia Chandler, Assistant Executive Director for Media and Public Communications at 1-916-654-4989 or e-mail at: mediaoffice@energy.state.ca.us


Documents concerning the Project proposal can be viewed on the Energy Commission's website at: www.energy.ca.gov/sitingcases/eastshore

IT IS SO ORDERED.

Dated December 4, 2007, at Sacramento, California.



JEFFREY D. BYRON
Commissioner and Presiding Member
Eastshore AFC Committee



JOHN L. GEESMAN
Commissioner and Associate Member
Eastshore AFC Committee

Mailed to Lists: POS, 7071, 7072, 7073

Proof of Service List (Revised on 12/7/07)
filed with Original Document. Mailed from
Sacramento on 12/4/07 MAS

ATTACHMENT A

TOPIC & WITNESS SCHEDULE MONDAY, December 17, 2007

Topic	Witnesses	Time
Project Purpose and Description	<u>Applicant:</u> Trewitt; Stein; Scholl <u>Staff:</u> Pfanner	Declarations
Power Plant Efficiency	<u>Applicant:</u> Trewitt <u>Staff:</u> Pfanner; Baker	Declarations
Power Plant Reliability	<u>Applicant:</u> Trewitt <u>Staff:</u> Pfanner; Baker	Declarations
Transmission System Engineering	<u>Applicant:</u> Trewitt <u>Staff:</u> Pfanner; Ng; Hesters	Declarations
Transmission Line Safety and Nuisance	<u>Applicant:</u> Trewitt <u>Staff:</u> Pfanner; Odoemelam	Declarations
Facility Design	<u>Applicant:</u> Veerkamp; Trewitt <u>Staff:</u> Pfanner; Baker	Declarations
Geological/Paleontological Resources	<u>Applicant:</u> Trewitt; Stein; Scholl <u>Staff:</u> Pfanner; Pilling	Declarations
Cultural Resources	<u>Applicant:</u> Stein; Scholl <u>Staff:</u> Pfanner; Pilling	Declarations
Soil and Water Resources	<u>Applicant:</u> Stein; Scholl <u>Staff:</u> Pfanner; Latteri	Declarations
Hazardous Materials	<u>Applicant:</u> Stein; Scholl <u>Staff:</u> Pfanner; Greenberg; Tyler	Declarations
Worker Safety and Fire Protection	<u>Applicant:</u> Stein; Scholl <u>Staff:</u> Pfanner; Greenberg; Tyler	Declarations
Biological Resources	<u>Applicant:</u> Stein; Scholl <u>Staff:</u> Pfanner; Sanders	Declarations

**TOPIC & WITNESS SCHEDULE
MONDAY, DECEMBER 17, 2007**

Waste Management	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Phinney	Declarations
Visual Resources	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Hamblin	Declarations
Compliance	<u>Applicant</u> : Trewitt; Stein; Scholl <u>Staff</u> : Pfanner; Shaw	Declarations
Air Quality	<u>Applicant</u> : Darwin; Westbrook; Stein <u>Staff</u> : Birdsall; BAAQMD <u>Alameda</u> : Zannetti <u>Chabot</u> : Zannetti <u>Pilots Group</u> : Cross-exam <u>Sarvey</u> : Himself	120 min
Public Health	<u>Applicant</u> : Westbrook; Stein <u>Staff</u> : Greenberg; BAAQMD <u>Chabot</u> : Cross-exam <u>Pilots Group</u> : Cross-exam	30 min
Local System Effects	<u>Applicant</u> : Mackin <u>Staff</u> : Hesters All parties request cross-exam	60 min
Alternatives	<u>Applicant</u> : Stein; Scholl; Trewitt <u>Staff</u> : Phinney <u>Pilots Group</u> : Cross-exam	Declarations 60 min
Socioeconomics	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner <u>Hayward</u> : Assemblymember Hayashi; Senator Corbett <u>Chabot</u> : Ugale	Declarations Elected Officials: 20 min 15 min
Environmental Justice	<u>Staff</u> : Pfanner <u>Alameda</u> : Witt <u>Chabot</u> : Sperling, Zuliani; Arnold	Declaration 10 min 30 min

*Includes direct testimony and cross-examination; parties may yield time.

**TOPIC & WITNESS SCHEDULE
TUESDAY, DECEMBER 18, 2007**

Topic	Witnesses	Time*
Traffic and Transportation	<u>Applicant:</u> Darwin; Corbin; Blumenthal; MacDonald; Roberts; Scholl; Graves <u>Staff:</u> Adams; Strattan; Knight; Butterfield; Cathey <u>Hayward:</u> Bauman <u>Alameda:</u> Needle; Berlin <u>Pilots Group:</u> Richards; Ford; Erhard; White <u>Chabot:</u> Cross-examine	150 min
Land Use	<u>Applicant:</u> Scholl <u>Staff:</u> Adams; Strattan; Knight; Butterfield; Cathey <u>Haavik:</u> Armas <u>Hayward:</u> Mayor Sweeney; Rizk; Bauman <u>Alameda:</u> Dalton; Needle <u>Pilots Group:</u> Cross-exam	120 min
Noise and Vibration	<u>Applicant:</u> Farhang; Veerkamp; Stein; Scholl <u>Staff:</u> Khoshmashrab <u>Haavik:</u> Fancher	30 min

*Includes direct testimony and cross-examination; parties may yield time.

ATTACHMENT B

COMMITTEE SCHEDULE FOR REMAINDER OF PROCEEDING

EVENT	DATE
File testimony and exhibits; opening briefs on override	December 7, 2007
Evidentiary hearing	December 17-18, 2007
Parties file post-hearing briefs	10 days after transcript is posted on CEC website
Parties file reply briefs on contested issues	<i>If Necessary*</i>
Committee issues Presiding Member's Proposed Decision (PMPD) and Notice of Committee Conference (Minimum 30-day public review)	<i>To Be Scheduled*</i>
Parties file written comments on PMPD	<i>To Be Scheduled</i>
Committee Conference on PMPD; parties submit errata or other clarifications	<i>To Be Scheduled</i>
Close of comment period on PMPD	<i>To Be Scheduled</i>
Commission consideration of PMPD	<i>To Be Scheduled</i>

*These events will be noticed separately.

City of Hayward Civic Center Plaza

Directions From:

Amttrak:

Exit at the Hayward Station. Take A.C. Transit bus #92 to the BART station, approximately six blocks away.

BART:

Exit at the Hayward Station, walk one block east, along Civic Center Plaza.

Peninsula:

Take the Hayward-San Mateo Bridge (CA-92) east towards Hayward. CA Highway 92 becomes Jackson St, continue east to Watkins St. Turn left onto Watkins St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.

North Bay (using I-880):

Take I-880 South, exit at A St and at the end of the ramp, turn left onto A St. Continue east on A St, towards the hills, to Grand St. Turn right onto Grand St and then turn left onto B St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.

South Bay (using I-880):

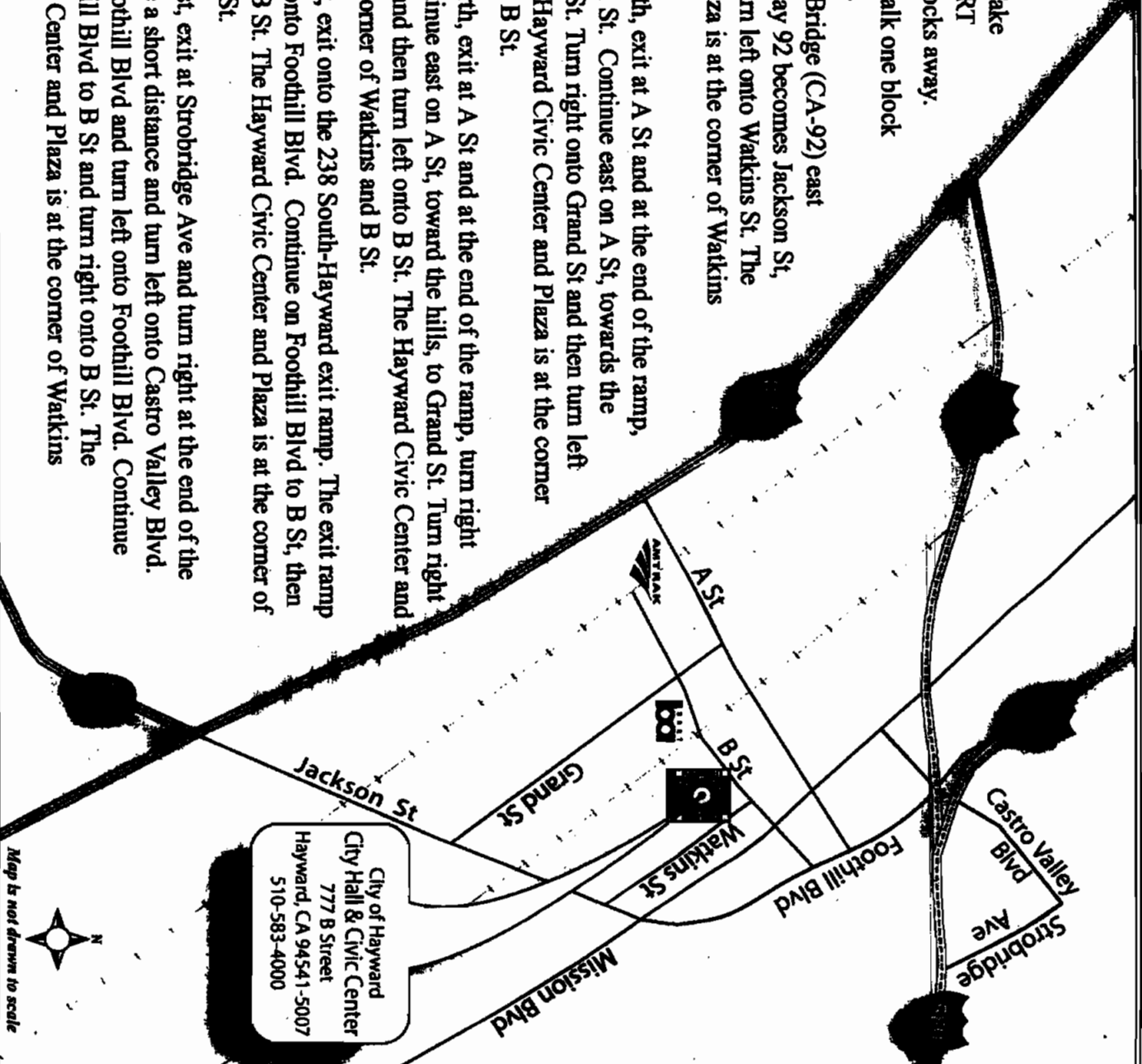
Take I-880 North, exit at A St and at the end of the ramp, turn right onto A St. Continue east on A St, toward the hills, to Grand St. Turn right onto Grand St and then turn left onto B St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.

North Bay (using I-580):

Take I-580 East, exit onto the 238 South-Hayward exit ramp. The exit ramp will place you onto Foothill Blvd. Continue on Foothill Blvd to B St, then turn right onto B St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.

Tri Valley (using I-580):

Take I-580 West, exit at Strobridge Ave and turn right at the end of the ramp. Continue a short distance and turn left onto Castro Valley Blvd. Continue to Foothill Blvd and turn left onto Foothill Blvd. Continue south on Foothill Blvd to B St and turn right onto B St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.



City of Hayward
City Hall & Civic Center
777 B Street
Hayward, CA 94541-5007
510-583-4000

Map is not drawn to scale

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

**APPLICATION FOR CERTIFICATION FOR THE
EASTSHORE ENERGY CENTER IN HAYWARD
BY TIERRA ENERGY OF TEXAS**

DOCKET NO. 06-AFC-6
(AFC ACCEPTED 11/8/06)

ORDER GRANTING PETITION TO INTERVENE

Upon consideration of the Petition to Intervene filed on November 20, 2007, by Robert Sarvey, an individual, the Committee designated to conduct proceedings in this matter makes the following findings:

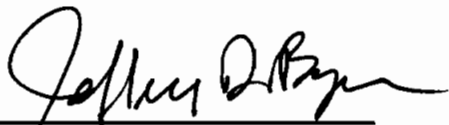
1. The deadline to file a petition to intervene was November 19, 2007, as noticed to all interested persons in the Notice of Prehearing Conference.
2. On November 20, 2007, a Petition to Intervene was filed by:
 Robert Sarvey
 501 W. Grantline Road
 Tracy, CA 95376
 Email: sarveybob@aol.com
3. The Petition was not timely filed.
4. Mr. Sarvey has participated in this proceeding for several months; his name and the responses to his comments are included in both the Preliminary Staff Assessment (PSA) and the Final Staff Assessment (FSA).
5. Mr. Sarvey offered no compelling reason for filing his Petition late.
6. The Applicant objected to said Petition on the grounds that it was filed late, that adding another party could delay the process; and that all the other parties met the deadline.
7. At the Prehearing Conference, notwithstanding the late filing, the Committee granted Mr. Sarvey's Petition in the interest of public participation.
8. The Petition contains the information required by section 1207 of the Energy Commission's regulations. (Cal. Code of Regs., tit. 20, § 1207).
9. The Petition states that Mr. Sarvey wishes to limit his participation to the topic of Air Quality.
10. Petitioner's interests are relevant to this proceeding.

It is therefore ORDERED that the Petition to Intervene filed by Robert Sarvey be GRANTED for the limited purpose of presenting evidence on Air Quality. Mr. Sarvey shall be included on the Proof of Service (POS) list as Intervenor. As Intervenor, Mr. Sarvey may exercise the rights and shall fulfill the obligations of a party as set forth in the Energy Commission's regulations. (Cal. Code of Regs., tit. 20, § 1001 et seq.) Mr. Sarvey is advised that no time extensions to review case materials shall be granted to new Intervenor. Docketed materials filed by Staff and Applicant are posted on the Energy Commission's website at www.energy.ca.gov/sitingcases/eastshore.

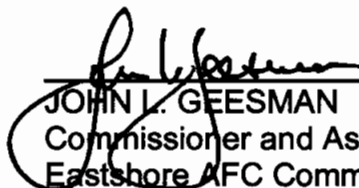
Mr. Sarvey requests financial hardship relief from the requirement to file 12 copies of his documents with the Docket Unit and to mail printed copies to the parties on the POS list. Section 1209 (c) of the Energy Commission's regulations provides that any party may file **one printed original document** and submit an electronic copy of the document to the Docket Unit. (Cal. Code of Regs., tit. 20, § 1209 (c); see also § 1209.5.) Section 1210 allows the parties to serve electronic copies of their documents to those on the POS list requesting electronic copies. (Cal. Code of Regs., tit. 20, § 1210.) All parties on the POS list in this matter have provided their e-mail addresses and may be served electronically in lieu of printed copies. Voluminous documents may be scanned and submitted on compact discs (CDs) or other electronic means, if necessary, as described in section 1209.5.

THEREFORE, Mr. Sarvey shall not be required to file 12 printed copies of his documents with the Docket Unit or mail copies to the POS list. However, Mr. Sarvey is responsible for ensuring that the Docket Unit and all parties on the POS list receive electronic or other copies of his filings.

Dated December 4, 2007, at Sacramento, California.



JEFFREY D. BYRON
Commissioner and Presiding Member
Eastshore AFC Committee



JOHN L. GEESMAN
Commissioner and Associate Member
Eastshore AFC Committee

Proof of Service List (Revised on 12/4/07)
filed with Original Document. Mailed from
Sacramento on 12/4/07 MAR).

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



TO: All Parties

**RE: The Eastshore Energy Center in Hayward by Tierra Energy of Texas
Proof of Service List
Docket No. 06-AFC-6**

Attached is a new Proof of Service List for the above mentioned project, current as of December 4, 2007. The Proof of Service List on the Commission's Web Site at <http://www.energy.ca.gov/sitingcases/eastshore/index.html> has also been updated. Please use this list for all filings and submittals.

Please review this information and let us know if you would like to be removed from the Proof of Service or if there are any changes in your contact information.

Dated in Sacramento, California on December 4, 2007.



MAGGIE READ
Hearing Adviser's Office

Attachments

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION
FOR THE EASTSHORE ENERGY CENTER
IN CITY OF HAYWARD
BY TIERRA ENERGY

Docket No. 06-AFC-6

PROOF OF SERVICE
(Revised 12/4/2007)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 06-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

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jluckhardt@downeybrand.com

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Public Adviser
pao@energy.state.ca.us

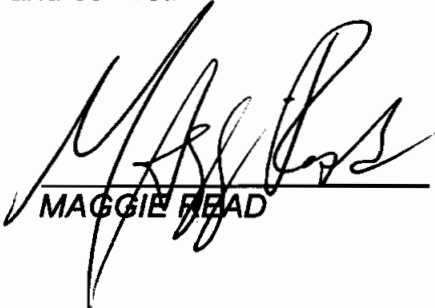
DECLARATION OF SERVICE

I, Maggie Read, declare that on 12/4/07, I deposited copies of the attached Notice of Evidentiary Hearing Dates and Hearing Order, Petition to Intervene, All Parties Letter and new Proof of Service in the United States mail at Sacramento, CA, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.



MAGGIE READ