

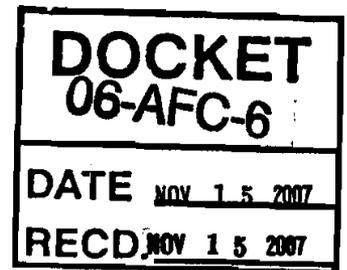
**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

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

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

**EASTSHORE ENERGY CENTER'S OPPOSITION TO INTERVENER'S PETITION
FOR COMMITTEE TO SET ASIDE DATES FOR THE PRE-HEARING CONFERENCE
AND EVIDENTIARY HEARINGS**

November 15, 2007



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Eastshore Energy Center ("Eastshore") objects to Intervener Paul Haavik's Petition to Set Aside Dates for the Pre-Hearing Conference and Evidentiary Hearing ("Intervener's Petition"). Eastshore has reviewed Intervener's Petition. Based upon that review Eastshore herein describes its opposition to the Intervener's request to further delay the proceedings.

The Proceedings Are Legally Required to Go Forward As Scheduled

Eastshore calls the Committee's attention to the legal requirement that the proceedings continue as scheduled. Regardless of the schedule delays up until this point, California law requires that the evidentiary hearings, as well as the prehearing conference, proceed on the current schedule.

Eastshore first highlights the fact that this particular Application for Certification (AFC) process was expected to last 12 months pursuant to the California Energy Commission's ("Commission") Power Plant Site Certification Regulations (California Code of Regulations, Title 20, Section 1704 et seq.). We are now looking at an 18-month schedule for the Eastshore AFC. As discussed below, Eastshore has not been the source of the delay.

The Intervener correctly points out that Section 1747 of Title 20 of the California Code of Regulations (CCR) requires the final staff assessment (FSA) be published at least 14 days before the start of the evidentiary hearings. That code section does not state that the FSA must be published at least 14 days before the prehearing conference. There is no requirement that the FSA be published any particular amount of time before the prehearing conference, so long as it is

published at least 14 days before the evidentiary hearings, as has occurred with the Eastshore FSA.

Furthermore, Eastshore draws the Committee's attention to Section 25521 of the California Public Resources Code which addresses hearings on AFCs and declares: "[n]o earlier than 90 nor later than 240 days after the date of the filing of an application, the commission shall commence a public hearing or hearings on the application" (Emphasis added.) Eastshore's AFC was filed on September 22, 2006 and the evidentiary hearing dates are currently scheduled for December 17-18, 2007, well past the 240-day limit. Any further delay would push the hearing dates even further beyond the statutorily-prescribed deadline.

There Is Little Difference Between the Preliminary Staff Assessment and the Final Staff Assessment

The Intervener asserts in its Petition that it is unreasonable to expect that the FSA could be reviewed in the time period between the FSA's release and the prehearing conference. What the Intervener fails to acknowledge is the fact that there has been little change between the Preliminary Staff Assessment (PSA) and the FSA. Contrary to what the Intervener suggests, there have not been any considerable changes to the PSA. The differences between the two documents are in discrete sections that have been previously discussed at the PSA Workshop on September 6, 2007. Therefore, despite the length of the FSA, there has been sufficient time between its publication and the prehearing conference to review the obvious areas where changes from the PSA have been introduced. Any additional time requested by the Intervener would be unnecessary.

Eastshore Has Not Caused Any Delay in the Proceedings

Eastshore points out that it has not been the source of any of the delays in this proceeding. Eastshore filed one set of data responses one day late only to wait months for the PSA. Eastshore's comments on the PSA were two days late and not the cause for the delay in issuing the FSA. The Eastshore AFC was determined to be data adequate on November 8, 2006, over one year ago. The excessively late hearing dates are the result of consistent schedule delays throughout the AFC process. Eastshore has repeatedly expressed its concern regarding schedule delays and has encouraged the Hearing Officer to set the hearing dates at the earliest possible times.

As Eastshore has stated to the Committee in previous status reports, Eastshore is under contract with Pacific Gas and Electric Company (PG&E) to provide power by a date certain. Despite actions PG&E may or may not have taken to ease online requirements for other projects, Eastshore remains subject to the obligations of its power purchase agreement with PG&E. Should the Commission decide to give Eastshore a license for its proposed powerplant, Eastshore intends to fulfill its obligations to PG&E. Therefore, Eastshore is very concerned about any further delays. It is Eastshore's fervent hope that the Committee will remain on its current evidentiary hearing schedule.

Conclusion

Eastshore appreciates this opportunity to object to Intervener's Petition. Eastshore highlights the fact that even the currently scheduled evidentiary hearings are well-beyond the legally required timeline. The Intervener and the public have had sufficient time to review the previously discussed changes between the PSA and the FSA. Eastshore objects strongly to any further delays.

DATED: November 15, 2007

DOWNEY BRAND LLP

By: 

Nicolaas W. Pullin

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PROOF OF SERVICE

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
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DECLARATION OF SERVICE

I, Lois Navarrot, declare that on November 15, 2007, I deposited copies of the attached EASTSHORE ENERGY CENTER'S OPPOSITION TO INTERVENER'S PETITION FOR COMMITTEE TO SET ASIDE DATES FOR THE PRE-HEARING CONFERENCE AND EVIDENTIARY HEARINGS in the United States mail at Sacramento, California 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.



Lois Navarrot