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14 **STATE OF CALIFORNIA**
 15 **State Energy Resources**
 16 **Conservation And Development Commission**

17 _____)
 18 In the Matter of:) Docket No. 06-AFC-6
 19)
 20) PREHEARING CONFERENCE
 21) STATEMENT OF THE CITY OF
 22) HAYWARD
 23)
 24) APPLICATION FOR CERTIFICATION)
 25) FOR THE EASTSHORE ENERGY)
 26) CENTER)
 27)
 28) _____)

23 Pursuant to the Notice of Prehearing Conference and Evidentiary Hearing Dates,
 24 dated October 16, 2007 (“Notice”), the City of Hayward (“City”) hereby files this
 25 Prehearing Conference Statement in the proceedings for the Eastshore Energy Center
 26 (“EEC” or “Project”).

27 We respond below to the specific issues raised in the Notice.
 28

1 **1. The topic areas that are complete and ready to proceed to evidentiary**
2 **hearing.**

3 All topic areas are complete and ready to proceed to evidentiary hearings.

4 **2. The topic areas that are not complete and not yet ready to proceed to**
5 **evidentiary hearing, and the reasons therefore.**

6 None to the City's knowledge.

7 **3. The topic areas that remain disputed and require adjudication, and the**
8 **precise nature of the dispute for each topic.**

9 Land Use

10 The EEC does not comply with laws, ordinances, regulations, and standards
11 ("LORS") that pertain to the safe operation of the Hayward Municipal Airport ("Airport").
12 Because of the proximity of the EEC to the Airport and the already approved Russell City
13 Energy Center ("RCEC"), pilots cannot safely navigate the airspace surrounding the
14 Airport. Short of moving the plant, no mitigation may resolve this critical safety issue. In
15 addition to this safety issue, siting of the EEC also significantly restricts future expansion of
16 the Airport.

17 The EEC is proposed in the City's Industrial Zone, but is not a "permitted use" in
18 that zone and thus would require a Conditional Use Permit ("CUP"). As explained in the
19 Final Staff Assessment ("FSA") for the project, the EEC does not meet the City's standards
20 to obtain a CUP. The City will provide testimony to describe the aspects of the EEC that
21 fail to meet the City's standards for a CUP. In brief, the EEC could not be granted a CUP
22 because:

- 23 • The EEC is in irreconcilable conflict with multiple provisions of the City of
24 Hayward Airport Approach Zoning Regulations.
- 25 • The EEC's 14, 70-foot tall stacks are incompatible with the heights of existing
26 facilities in the area and create a visual blight to nearby residential areas.
- 27 • Proposed 80- and 90-foot tall transmission lines, in addition to existing 40- and
28 50-foot tall transmission lines create visual blight.

- 1 • The EEC is inconsistent with the City’s General Plan. Pursuant to the General
2 Plan, the City is implementing the objective of grouping the heavy industrial
3 uses in a certain area of the industrial corridor (away from residential areas).
4 The EEC is located outside of the heavy industrial area and adjacent to
5 commercial and residential uses.
- 6 • The EEC will emit PM₁₀ that will substantially affect nearby residences,
7 schools and other sensitive receptors. Mitigation through the use of reduction
8 credits from a non-local source does not lessen the local impacts.
- 9 • The EEC is inconsistent with the City’s Hazardous Waste Management
10 regulations.

11 Because of this significant noncompliance with LORS, the City strongly opposes
12 the EEC and believes there is no mitigation sufficient to avoid this noncompliance.

13 Traffic and Transportation

14 As will be described in testimony related to “Land Use,” the EEC is incompatible
15 with the Airport. The Federal Aviation Administration recommended that the EEC be
16 disapproved due to safety concerns and the City will submit testimony in support of that
17 position.

18 Air Quality

19 Use of emission reduction credits to offset PM₁₀ emissions do not mitigate local air
20 quality concerns.

21 Socioeconomic Issues

22 It is inherently unfair for the City to bear the burden of two new power plants in its
23 City. The cumulative impact of two facilities on the City’s air, water, traffic, risks from
24 hazardous materials and the impact of simultaneous construction of two large industrial
25 facilities are not insignificant. The City has borne its fair share of the burden to provide
26 reliable electricity to the State by cooperating in the siting of the 600 MW RCEC power
27 plant.
28

1 **4. The identity of each witness sponsored by each party; the topic area(s)**
 2 **which each witness will present; a brief summary of the testimony to be**
 3 **offered by each witness; qualifications of each witness; and the time**
 4 **required to present direct testimony by each witness.**

<u>Witness</u>	<u>Testimony</u>	<u>Approximate Time Required</u>
Hon. Ellen Corbett, Senator, Senate District 10	Socioeconomic Issues	10 minutes
Hon. Mary Hayashi, Assemblymember, 18 th District	Socioeconomic Issues	10 minutes
Michael Sweeney, Mayor, City of Hayward	Land Use, Socioeconomic Issues	30 minutes
David Rizk, Planning Manager, Department of Community and Economic Development, Planning Division, City of Hayward	Land Use	60 minutes
Robert Bauman, Director of Public Works, City of Hayward	Land Use, Traffic and Transportation	60 minutes

15
 16 **5. Topic areas upon which a party desires to cross-examine witnesses, a**
 17 **summary of the scope of such cross-examination, and the time desired**
 18 **for such cross-examination.**

19 The City requests the opportunity to cross-examine all witnesses giving testimony
 20 related to the Airport and compliance with LORS.

21 **6. A list identifying exhibits and declarations that each party intends to**
 22 **offer into evidence and the technical topics to which they apply.**

City of Hayward General Plan, adopted March 12, 2002, as amended.
Hayward Municipal Code, including provisions of the Hayward Zoning Ordinance and uncodified ordinances adopted by the Hayward City Council
City of Hayward Design Guidelines
Hayward Executive Airport, Airport Master Plan, April 2002, as amended

28

1 Hayward Executive Airport policies and procedures, including but not limited to,
2 Noise Abatement Departure Procedures; Operational Procedures for Jet Aircraft; Quiet
3 Flying Techniques; Touch and Go / Stop and Go Procedure

4
5 The City reserves the right to amend this list prior to the Evidentiary Hearing.

6 **7. Proposals for briefing deadlines, vacation schedules, and other**
7 **scheduling matters;**

8 A Prehearing Conference has been set for November 26 and the Evidentiary
9 Hearings for December 17 and 18. If additional hearings are necessary, the City is
10 available for evidentiary hearings on any date set by the Commission.


11 If briefs are required, the City requests that an expedited transcript be prepared on
12 any issues to be briefed. The City would request a minimum of 15 days after receiving the
13 transcript to file any briefs.

14 **8. For all topics, the parties shall review the proposed Conditions of**
15 **Certification listed in the Final Staff Assessment (FSA) for**
16 **enforceability, comprehension, and consistency with the evidence, and**
17 **submit any proposed modifications.”**

18 The City’s proposed modifications, if any, will be set forth in testimony or supplied
19 through additional exhibits filed during the Evidentiary Hearing.

20
21 DATED: November 16,2007

MAUREEN CONNEELY,
Interim City Attorney

22
23
24 By 
Diana J. Graves
25 Pillsbury Winthrop Shaw Pittman LLP

26 Attorneys for City of Hayward
27
28

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 11/14/2007)

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
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DOCKET	
06-AFC-6	
DATE	NOV 14 2007
RECD.	NOV 15 2007

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DECLARATION OF SERVICE

I, _____, declare that on _____, I deposited copies of the attached _____ in the United States mail at _____ 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.



Signed by

Michael R. Wilson
Paralegal