

DOCKET 06-AFC-6
DATE NOV 19 2007
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November 19, 2007

California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

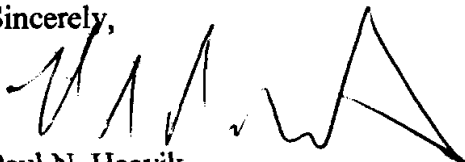
Re: Docket No. 06-AFC-6 Eastshore Energy Center

Dear Docket Unit:

Enclosed for filing with the California Energy Commission (1) original of the **Intervener's Prehearing Conference Statement and Witness Testimony, for the Eastshore Energy Center (06-AFC-6).**

The proof of service has been satisfied to all parties, electronically.

Sincerely,



Paul N. Haavik

**Paul N. Haavik
25087 Eden Avenue
Hayward, CA 94545
510-427-9057**

**State of California
Energy Resources Conservation
And Development Commission**

In the matter of)	Docket No. 06-AFC-6
)	
)	
Eastshore Energy Center)	
)	Intervener's Prehearing Conference Statement Witness Testimony

Paul N. Haavik, Intervener, in accordance with 20 CCR sub-section 1718.5 and the Committee Order dated March 12, 2007, hereby files the Prehearing Conference Statement and Witness Testimony in the matter of the Eastshore Energy Center. The intervener is prepared to proceed to the evidentiary hearing on all topic areas in the Final Staff Assessment. The attached table (table 1) presents a summary (by topic area) of:

Whether or not disputes between the intervener and parties concerning the subject area exists including a description of the nature of each dispute;

Identity of witnesses and testimony.

Time estimate for direct and cross-examination.

List of Exhibits for reference.

All topic areas are complete and ready to proceed to evidentiary hearings except for Noise and Vibration.

The Noise and Vibration may be incomplete and require further sound testing. Mitigation of a sound wall may also be appropriate.

The topic areas that remain disputed are:

Land Use: The Eastshore Energy Center(EEC) does not conform to the laws, ordinances, regulations and standards. The premise that a Power Purchase Agreement with PG & E Company necessitates the location of this project at its current location is historically false. Mr. Jesus Armas will testify to the chronological events leading to the submission of the AFC.

Noise and Vibration: The CEC staff has not provided any independent testing. The testing has been provided by the applicant. Further testing and possibility of construction of a sound wall is required. Ms. Beth Fancher, Facilities Manager, Fremont Bank will provide testimony. CEC Staff testimony of Shahab Khoshmashrab will be cross-examined as to sources of testing used by the CEC for the Noise and Vibration section.

It is anticipated that 30 – 45 minutes be provided for testimony and final statements. Several items are for information only.

This intervener requests the opportunity to cross-examine all witnesses including the Noise and Vibration Testimony of Shahab Khoshmashrab.

It is respectfully recommended that at the conclusion of the evidentiary hearing that the Committee can provide a determination in a timely manner.

Sincerely,

**Paul N. Haavik,
Intervener**

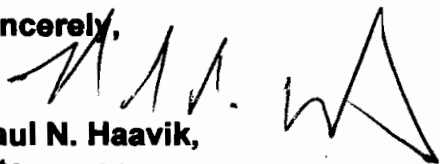
A handwritten signature in black ink, appearing to read 'Paul N. Haavik', is written over the typed name. The signature is stylized and somewhat cursive.

TABLE 1

Topic Area	Disputes w/parties	Witness	Testimony	Direct Est.	Cross Est.
Land Use	Yes	Armas	Attached	30 min	Unkn
Noise and Vibration	Yes	Fancher	Attached	10min	Unkn
Noise and Vibration	Yes	Khoshmashrab On File			10min

Exhibits List

06-AFC-6

Eastshore Energy Center

Prehearing Conference and Hearing

CEC Final Staff Assessment-Eastshore Energy Center

Docket Log # 43249 Document-Noise and Vibration

**Docket Log # 42726 Document-City of Hayward PSA
Response by City of Hayward**

**Docket Log # 42411 Document-Letter from Bank of
Fremont by Terrence Stinnett**

**Docket Log # 40800 Document-Letter from City of
Hayward by Jesus Armas regarding Location feasibility**

**Docket Log # 40102 Document-Letter from City of
Hayward by David Rizk regarding Land Use Issues**

**Docket Log # 39945 Document-Letter from City of
Hayward by David Rizk regarding determination that the
Eastshore Energy Center is not consistent with Zoning
and General Plan**

(4)

**Docket Log # 40407 Document-Letter from CEC to City
of Hayward, Jesus Armas regarding feasibility of
Common Sites**

Docket Log # 39463 Document-Letter from City of Hayward, City Council Meeting indicating determination whether Eastshore Energy Center is consistent with Zoning and General Plan.

Docket Log # 38929 Document-Letter from City of Hayward, by Jesus Armas for Items of Discussion by the Hayward

Docket Log # 38254 Document-Report of Conversation with Lorne Prescott and Jesus Armas, City of Hayward

NOTE: Due to File size, the Final Staff Assessment will not be attached. Please reference existing copy filed November 9, 2007. All other documents are filed on the CEC website and Docketed.

TESTIMONY OF JESUS ARMAS
November 19, 2007

My name is Jesus Armas. I hold a Bachelor of Arts degree in Political Science and a Masters in Public Administration, and have over thirty years of local government experience. Most recently, from February, 1993 until early July, 2007, I served as the City Manager for the City of Hayward. In this capacity, I was responsible for the management of the City and implementation of policy decisions and direction provided by the Hayward City Council. As part of my duties, I met regularly with private and public sector individuals desiring to submit development applications with the City. These meetings generally preceded the submittal of a formal land use application as the affected party desired to ascertain City policy with respect to land use issues in advance of submitting a formal application. The presubmittal meeting afforded the interested party an opportunity to ascertain whether the proposed use would be consistent with existing general plan and zoning designations and to identify issues likely to surface during the application review process. By conducting this due diligence, applicants were better informed of City policies and better able to decide whether to process a formal application.

In June of 2006, at the request of Tierra Energy, I met with company representatives. At that time, I was informed that Tierra Energy had plans to develop and construct a 115-megawatt power plant on a 6.2-acre parcel at 25101 Clawiter Road, Hayward, Californian. This plant was identified as the Eastshore Energy Center. At that meeting, I was informed that in early April 2006 PG&E had awarded a power purchase agreement (PPA) to a predecessor company to develop Eastshore. I also learned that Tierra Energy acquired the project and related PPA in late April 2006. Finally, Tierra Energy representatives reported that it was in the process of purchasing the 6.2- acre site, with escrow scheduled to close later in the summer. (Subsequently, I learned that Tierra Energy gained title to the site on August 3, 2006.)

During this initial meeting, I advised Tierra Energy representatives that this was first time anyone had informed the City that a second power plant was proposed to be constructed in Hayward. I also indicated that I had been monitoring closely the PPAs awarded by PG&E because of its impact on the proposed Russell City Energy Center. In fact, I listened to PG&E's announcement that it had awarded six PPAs. (It is worth noting that in both the oral presentation and in the written documentation related to the award of the PPAs, PG&E identified the general location of each power plant, save one. The exception was a facility labeled Black Hills, which lacked a geographic location. Owing to the name and the absence of any other information that would indicate its proposed location, it was impossible to discern its location. Only much later was it learned that it was to be constructed in Hayward as the Eastshore facility).

(6)

I also informed Tierra Energy representatives that power plants are not a permitted use, nor are they listed as an allowed use in any zoning district in the City. Because the zoning is exclusionary, meaning that any use not enumerated is not allowed, I informed Tierra Energy that a formal land use application would need to be submitted to the City. The

application would serve as the basis for a determination relative to the appropriateness of the proposed location, in light of surrounding uses and activities. I also advised Tierra Energy officials that this was the same process followed by the owner of the RCEC, which resulted in public hearings before the Hayward Planning Commission and Hayward City Council. (Following a staff analysis and recommendation, as well as consideration of public testimony, both the Commission and Council determined that the proposed location for the RCEC was appropriate and consistent with applicable land use regulations.)

During this initial meeting, as well as in subsequent sessions with Tierra Energy representatives, I voiced my reservations about the appropriateness of proposed location. This concern stemmed from awareness of the proximity of the Clawiter location to nearby residences, educational institutions and other incompatible activity.

In late October, 2006, Tierra Energy filed a development application, which served as the basis for a staff evaluation and subsequent determination regarding land use consistency. Based on this analysis, a recommendation of non-consistency was submitted to the Hayward Planning Commission in February of 2007 and Hayward City Council in March 2007. Because of a tie vote, the Commission was unable to present a formal recommendation to the Council. During its hearing on the application, the Council heard testimony from the applicant as well as nearby residents, business owners and other interested parties. Ultimately, the Council voted unanimously, with one absence, to accept the staff recommendation of non-consistency. This determination was subsequently conveyed to the California Energy Commission.

TESTIMONY OF BETH FANCHER

November 19, 2007

My name is Beth Fancher. I have lived in Newark and worked throughout the Bay Area since 1979.

My work history has been with multiple high tech companies like Flextronics and Apple Computer. I worked in Quality Assurance as an assembler advancing to quality assurance inspector of electronic pc boards and assemblies and then to supervisor for about 14 years. I then took a job at Etec System in Hayward which was bought out by Applied Materials. I worked there as a Facilities Supervisor and Project Coordinator for 10 years. I have worked for **Fremont Bank** for 4.5 years as a Facilities Supervisor at the 25151 Clawiter location in Hayward. I have a high school education.

My responsibility is to maintain all of the buildings totaling 29. This includes any relocations and supporting remodels and new branches. In addition we take care of employee safety.

Our total staff is 240 employees at the 25151 Clawiter location and 47 employees at the 3108 Diablo Ave location in Hayward. The hours of operation at the Clawiter location is 24 hrs. We have an Item Processing department that works through the night. The Diablo hours are 6:00 a.m. to 9:00 p.m

Our campus has a patio area in the center of our complex at the Clawiter location that breaks and lunches are enjoyed. We have walkers that take their breaks and a portion of their lunch to take walks and get some exercise and fresh air. We have our health fair and a summer barbeque in the summer outdoors. We support our employees in improving and maintaining their physical health and mental attitudes by encouraging them to take time away from their desks.

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:

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DECLARATION OF SERVICE

I, Paul N. Haavik, declare that on November 19, 2007, I deposited copies of the attached Pre-Hearing Conference Statement and Witness Testimony in the United States mail at Hayward, 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.


Paul N. Haavik