

**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 STATUS REPORT**

**September 19, 2007**

<b>DOCKET</b>	
<b>06-AFC-6</b>	
<b>DATE</b>	<b>SEP 19 2007</b>
<b>RECD.</b>	<b>SEP 19 2007</b>

Jane E. Luckhardt  
Nicolaas W. Pullin  
DOWNEY BRAND LLP  
555 Capitol Mall, 10th Floor  
Sacramento, California 95814  
Telephone: (916) 444-1000  
FAX: (916) 444-2100  
E-mail: npullin@downeybrand.com  
**Attorneys for Eastshore Energy Center**

September 19, 2007

**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 STATUS REPORT**

**September 19, 2007**

The following provides Eastshore Energy Center's ("Eastshore") update to the Committee on the status of the above referenced proceeding. Eastshore has reviewed the Preliminary Staff Assessment. Based upon that review Eastshore herein describes the areas Eastshore anticipates taking to hearing with California Energy Commission Staff ("Staff"), Eastshore's intent to file for an override and Eastshore's continuing concerns about the overall permitting schedule for this proceeding.

***Potential Areas of Dispute with Staff***

Eastshore has reviewed the Preliminary Staff Assessment and plans to file its comments today. Eastshore's comments are predominately technical in nature and are not extensive. Eastshore continues to work with Staff to resolve minor technical issues in the Preliminary Staff Assessment. In addition to these technical issues, Eastshore highlights four areas in the following paragraphs: air quality, biology, land use and traffic and transportation.

***Air Quality***

Eastshore is working to resolve all outstanding issues with the Bay Area Air Quality Management District ("District") and Staff. Eastshore expects these issues will be resolved or minimal issues will remain that need to be resolved by the Committee. Eastshore is working with the District to set the particulate matter limit for the project. Eastshore has obtained a lower guarantee number from its engine manufacturer for particulate matter. Eastshore is concerned about its ability to obtain financing for the project should the limit for emission of particulate matter be set below the guarantee. It is Eastshore's belief that the District understands this

concern and will set the limit at the guarantee. All parties understand that the actual emissions of particulate matter from the project will not change irrespective of whether the emission limit is set at the guarantee level or at a lower number. With the Eastshore reciprocating engine technology, there are no exhaust gas particulate emissions controls that could somehow be adjusted to impact the emissions of particulate matter from the engines. Therefore, the higher number and its corresponding higher California Energy Commission ("Commission") mitigation levels will, if anything, provide a greater level of protection for air quality and public health. The extra mitigation comes about because a higher emission limit (set at the manufacturer guarantee) would result in a larger difference between the actual emissions from the project (which will not change irrespective of regulatory action) and the mitigation requirement set higher to reflect a higher emission limit in the Commission license.

Eastshore is providing other comments to Staff on other issues in air quality and expects to be able to resolve these issues with Staff. Eastshore expects to either reach agreement with Staff on all air quality issues or to have very specific and limited items to take to the Committee for resolution.

#### ***Biology***

Eastshore has received additional interconnection design information from Pacific Gas and Electric Company ("PG&E"). Eastshore will file this information with its comments on the Preliminary Staff Assessment. This additional information clearly shows the location of the transmission interconnection and proposed new pole locations. PG&E's information clearly demonstrates that the direction from which the interconnection enters the Eastshore Substation is from the north and away from the specific area of concern to CEC staff. Eastshore believes this information will resolve any outstanding concerns of Staff regarding impacts to wetlands on the PG&E substation property.

Staff raised a concern about nitrogen deposition impacts but was unable to confirm any impact in the Preliminary Staff Assessment. Eastshore does not believe there is an impact in this area. Should this issue be carried forward by Staff, Eastshore will respond.

#### ***Land Use and Traffic and Transportation***

The issues identified in the Preliminary Staff Assessment in the areas of land use and traffic and transportation relate to potential impacts of the project on aviation. Due to the technology proposed for this project, Staff agrees with Eastshore that the thermal plumes from

this project will not pose a threat to aviation in the area. Further impacts to aviation from claimed reductions in airspace and incompatibility with local ordinances are in dispute between Staff and Eastshore, Eastshore and Staff have agreed to disagree and plan to take the issue to the Committee for resolution.

***Request for Override***

Because Staff has recommended in their Preliminary Staff Assessment that the project not be permitted due to its impacts on aviation and thereby, lack of compliance with Hayward ordinances, Eastshore will prepare and file a request for an override. Eastshore does not believe that an override will be necessary but cannot wait for the determination by the Committee on the aviation issues prior to filing this request.

***Proceeding Delays***

Eastshore continues to be concerned about the delays in this proceeding. Eastshore is working diligently with Staff to resolve as many issues as it can prior to hearings. Eastshore has targeted its comments on the Preliminary Staff Assessment to only those areas where Eastshore really believes there is a concern or an inaccurate representation of the project. Eastshore requests that the Committee schedule a prehearing conference and hearing dates at its earliest convenience.

***Conclusion***


Eastshore appreciates this opportunity to provide a status report to the Committee. Eastshore will continue to work with Staff to resolve outstanding issues in air quality and biology. Staff has indicated there is no way to resolve its concerns regarding impacts to aviation therefore, Eastshore anticipates a need to litigate these issues before the Committee. Nonetheless, Eastshore anticipates that only a day or two at most of hearing will be required to present this case to the Committee. Eastshore remains concerned about the proceeding schedule and urges the Committee to set dates for the remainder of the proceeding at the earliest possible times.

////

////

DATED: September 19, 2007

DOWNEY BRAND LLP

By:   
\_\_\_\_\_  
Nicolaas W. Pullin

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

**APPLICATION FOR  
CERTIFICATION FOR THE  
EASTSHORE ENERGY CENTER**

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

**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  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[Docket@state.ca.us](mailto:Docket@state.ca.us)

Greg Trewitt, Vice President Tierra Energy 710 S. Pearl Street, Suite A Denver, CO 80209 <a href="mailto:greg.trewitt@tierraenergy.com">greg.trewitt@tierraenergy.com</a>	David A. Stein, PE Vice President CH2M Hill 155 Grand Avenue, Suite 1000 Oakland, CA 94612 <a href="mailto:dstein@ch2m.com">dstein@ch2m.com</a>
Jennifer Scholl Senior Program Manager CH2M Hill 610 Anacapa Street, Suite B Santa Barbara, CA 93101 <a href="mailto:jscholl@ch2m.com">jscholl@ch2m.com</a>	Harry Rubin, Executive Vice President RAMCO Generating Two 1769 Orvietto Drive Roseville, CA 95661 <a href="mailto:hmrenergy@msn.com">hmrenergy@msn.com</a>
Jane Luckhardt, Esq. Downey Brand, LLP 555 Capitol Mall, 10th Floor Sacramento, CA 95814 <a href="mailto:jluckhardt@downeybrand.com">jluckhardt@downeybrand.com</a>	Larry Tobias CA Independent System Operator 151 Blue Ravine Road Folsom, CA 95630 <a href="mailto:ltobias@caiso.com">ltobias@caiso.com</a>
Electricity Oversight Board 770 L Street, Suite 1250 Sacramento, CA 95814 <a href="mailto:esaltmarsh@eob.ca.gov">esaltmarsh@eob.ca.gov</a>	Jesus Armas, City Manager City of Hayward 777 B Street Hayward, CA 94541 <a href="mailto:jesus.armas@hayward-ca.gov">jesus.armas@hayward-ca.gov</a> <a href="mailto:Michael.sweeney@hayward-ca.gov">Michael.sweeney@hayward-ca.gov</a>

Paul N. Haavik 25087 Eden Avenue Hayward, CA 94545 <a href="mailto:lindampaulh@msn.com">lindampaulh@msn.com</a>	
Jeffrey D. Byron Presiding Member <a href="mailto:jbyron@energy.state.ca.us">jbyron@energy.state.ca.us</a>	John L. Geesman Associate Member <a href="mailto:jgeesman@energy.state.ca.us">jgeesman@energy.state.ca.us</a>
Susan Gefter Hearing Officer <a href="mailto:sgefter@energy.state.ca.us">sgefter@energy.state.ca.us</a>	Caryn Holmes Staff Counsel <a href="mailto:cholmes@energy.state.ca.us">cholmes@energy.state.ca.us</a>
Bill Pfanner <a href="mailto:bpfanner@energy.state.ca.us">bpfanner@energy.state.ca.us</a>	Public Adviser <a href="mailto:pao@energy.state.ca.us">pao@energy.state.ca.us</a>

**DECLARATION OF SERVICE**

I, Lois Navarrot, declare that on September 19, 2007, I deposited copies of the attached Eastshore Energy Center's Status Report September 19, 2007 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