

STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

<b>DOCKET</b>
<b>06-AFC-6</b>
DATE JUL 15 2008
RECD. JUL 15 2008

In the Matter of: ) Docket: 06-AFC-6  
)  
)  
Application for Certification for the ) Staff Comments on PMPD  
Eastshore Energy Center in Hayward )  
By Tierra Energy ) July 15, 2008  
\_\_\_\_\_ )

**INTRODUCTION**

On June 20, 2008, the Presiding Member of the Committee assigned to the Eastshore Energy Center Application for Certification (AFC) proceeding issued the Presiding Member's Proposed Decision (PMPD). In the Notice of Availability of the Presiding Member's Proposed Decision and Notice of Evidentiary Hearing and Notice of Committee Conference (Notice), a deadline of July 15, 2008 for comments on the PMPD is established. These are staff's comments on the Eastshore PMPD.

In general, staff finds that the PMPD contains a thoughtful discussion of the issues raised in the AFC proceeding. However, there are several areas of the PMPD which could be clarified. These are identified below.

**Introduction**

On page 5, please delete (1) under Air Quality. The NO2 standards that apply to this project were identified in the development of the FSA. (Bay Area Air Quality Management District Rule 2-1-409.) In future cases, staff will consult with the air agencies as needed to demonstrate compliance with the new standards.

**Air Quality.** ~~(1) Applicant and Staff shall consult with CARB to identify and implement the appropriate modeling protocol to ensure that the project complies with the new state NO2 standard, which lowered the existing 1-hour average standard for NO2 of 0.25 ppm to 0.18 ppm, not to be exceeded, and established a new annual average standard of 0.030 ppm, not to be exceeded. (Adopted March 20, 2008.)~~ (2) Under Condition AQ-SC8, the project owner shall provide evidence of appropriate Emission Reduction Credits (ERCs) and/or woodstove/fireplace retrofit credits prior to construction. Failure to do so will delay construction.

**Compliance and Closure**

On page 49 of the PMPD, **COMPLIANCE-10** states that the time frame for reporting noise related complaints is 10 days. However, according to Condition **NOISE-2**, this time frame is 5 days. **COMPLIANCE-10** should be amended to accommodate **NOISE-2** as follows:

In addition to the monthly and annual compliance reporting requirements described above, the project owner shall report and provide copies to the CPM of all complaint forms, including noise and lighting complaints, notices of violation, notices of fines, official warnings, and citations, within 10 days of receipt unless the Condition of Certification of the affected discipline states otherwise.

### Air Quality

1) On page 126, the note below Air Quality Table 2 should be revised to show that the new NO<sub>2</sub> standards were approved by the Office of Administrative Law and became effective in early 2008.

Source: ARB, February 2007 (Note: New 1-hour NO<sub>2</sub> CAAQS of 0.18 ppm [338 µg/m<sup>3</sup>] and annual NO<sub>2</sub> CAAQS of 0.030 ppm [56 µg/m<sup>3</sup>] ~~are expected to be~~ were approved by the Office of Administrative Law ~~in late 2007~~ on February 19, 2008.)

2) On page 134: The title of Air Quality Table 15 should be revised to show the Greek symbol for micrograms per cubic meter.

Air Quality Table 15  
Construction-Phase Maximum Impacts (~~Mg~~ µg /M<sup>3</sup>m<sup>3</sup>)

3) On page 137, please delete the citation to Condition **AQ-4** in third bullet near the bottom of the page. Condition **AQ-4** is a restriction on the commissioning period, not on startups or shutdowns during routine operating conditions. Condition **AQ-13** includes the emission limits that are based on the estimated annual number of startups and shutdowns proposed by the applicant, but no Condition of Certification includes a specific limit on startups or shutdowns.

In addition, the following operating conditions are also included in calculating emission impacts:

- Exclusive use of pipeline-quality natural gas fuel with no provisions for an alternative or backup fuel (Condition **AQ-7**);
- Operation permitted up to 4,000 hours annually for each engine, which is equivalent to an annual capacity factor of approximately 45 percent (Condition **AQ-11**); and
- Start-ups and shutdowns limited to no more than 300 start-ups (0.5 hr per event) and 300 shutdowns (8.5 minutes per event) for each engine per year (Ex. 27, p. 4; ~~Condition **AQ-4**: commissioning period~~).

4) On page 138, please add Condition **AQ-SC12** to the citation of Condition **AQ-14** at the top of the page. The requirement for the reports is in **AQ-SC12**.

Condition **AQ-14** Verification (e), in conjunction with **AQ-SC12**, requires quarterly reports on CEMs data.

5) On page 148, please delete the final two sentences of the first partial paragraph. The purpose of AQ-SC6 is to offset emissions of ozone precursors to mitigate the impacts caused by the project's contribution to ozone formation, not to ensure compliance with the NO2 standard. The FSA (and PMPD footnote 38 on p.134) shows that project would comply with the applicable NO2 standard without mitigation.

~~Staff asserted that the ERCs identified in Condition AQ-SC6 would ensure compliance with the new standard. We take administrative notice that the state's new NO2 standard was adopted in March 2008, subsequent to the Evidentiary Hearings in this matter and we believe it is necessary to reopen the record for further evidence to confirm the project's compliance with the new standard.~~

6) On page 153, we note that Finding 24 is not applicable and should be deleted. (Bay Area Air Quality Management District Rule 2-1-409.)

~~24. Applicant and Staff shall consult with the California Air Resources Board (CARB) to implement the appropriate modeling protocol to ensure the project will comply with CARB's new NO2 emissions standard.~~

### **Cultural Resources**

1) On page 281, in the second paragraph, third sentence, please change "historic resource" to "historical resource", as that is the term used in CEQA. (See, Public Resources Code, section 21084.1.)

An archaeological resource that does not qualify as an historical resource may be considered a "unique" archaeological resource under CEQA.

2) On page 282, in the last sentence of the first full paragraph, please change "Historic Resources" to "Historical Resource", as that is the correct name of the Center.

Archival research included records searches at the Northwest Information Center of the California Historical Resources Information System (CHRIS) at Sonoma State University.

3) On page 282, in the second sentence of the second full paragraph, please add a verb.

The recorded resource, identified as the Eastshore-Grant Transmission Line (Site 19-002269), was originally constructed by PG&E in 1921-22.

4) On page 282, in the second sentence of the second full paragraph, please use the full name rather than an acronym.

Staff's investigative field survey was inconclusive since it appeared that remains of the Mt. Eden station are now located within the UPR-Union Pacific Railroad right-of-way to the east of the laydown area and outside the Berkeley Farms fence.

5) In the sentence beginning at the bottom of page 284 and continuing on to 285, please change the language to reflect the fact that deposits are not typically curated.

Conditions CUL-1 through CUL-7 incorporate Applicant's proposed mitigation measures as well as Staff's recommendations to ensure that unknown archaeological deposits are properly identified and ~~curated~~treated and that project related impacts are reduced to insignificance.

### **Noise and Vibration**

1) On page 394, regarding Findings 8 and 9, please modify the wording to reflect the fact that CEQA requires the Commission to address the Eastshore project's contribution to cumulative impacts.

8. The EEC's contribution to potential cumulative noise impacts resulting from the combination of the Russell City Energy Center and the EEC in the Hayward area can be mitigated by limiting EEC noise levels to 46 dBA at R1.

9. The Applicant's proposal to reduce the project only nighttime noise level to 48 dBA at R1 would not comply with CEQA requirements that the project's contribution to reduce cumulative impacts at R1 be mitigated to levels below the significance threshold of 5 dBA or less.

2) On page 394, please change Item #10 to reflect the fact that the PMPD is requiring the project to meet "normally acceptable" noise levels. (City of Hayward General Plan, Appendix N.)

9. The Applicant's proposal to reduce the project only noise level to 69 dBA at R2 would not meet "~~e~~conditionally normally acceptable" levels in accordance with local LORS."

### **Socioeconomic Resources**

1) On page 373, please modify the language in the second sentence in the first paragraph to reflect the fact that environmental and electric reliability benefits are not part of socioeconomic analysis.

The ~~public-economic~~ benefits of the project, ~~including economic, environmental, and electricity reliability benefits~~ are also reviewed.

2) On page 376, please modify the language in the third sentence of the last partial paragraph (continuing to the top of page 377) to reflect the fact that the Application for Certification considered direct, indirect and induced short-term employment, not just indirect short-term employment. (Exh. 1, pages 8.8-19, line 2, 8.8-22, line 2.) In addition, the fiscal impacts for construction sales tax estimates were based on direct locally purchased (Alameda County) materials and supplies. The IMPLAN model which estimates secondary impacts (multiplier impacts) was not used for this estimate. (Exh. 1, page 8.8-20.)

Project construction will provide local economic benefits by creating direct, indirect, and induced short-term employment, ~~as well as generating additional sales tax revenues due to~~

the multiplier effect from local payroll expenditures and local purchases of materials and equipment.

3) On page 38, Finding 11, please add language to reflect the fact that in addition to direct and indirect benefits to Hayward, Alameda County as a whole will receive induced benefits as a result of the project. (Exh. 1, pages 8.8-19, line 2, 8.8-22, line 2.)

11. The project will provide direct, and indirect economic benefits to the Hayward community, and induced economic benefits to the County of Alameda.

### **Soil and Water Resources**

1) On page 273, please correct the name of the document referred to in Finds 3 and 4.

3. The project owner will submit a Stormwater Pollution Prevention Plan (SWPPP) and a ~~Sediment and Erosion~~ Drainage, Erosion and Sediment Control Plan (~~SECP~~DESCP) for both the construction and operation phases of the EEC.

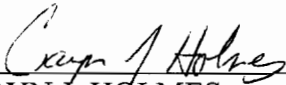
4. The SWPPP and ~~SECP~~ DESCP plans will be consistent with Alameda County and City of Hayward requirements, including Best Management Practices (BMPs), and shall comply with requirements of the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB).

### **Override**

On page 436, staff notes that there is no discussion of the socioeconomic benefits of the proposed project in the discussion of project benefits. Staff estimated the annual property taxes to be \$1.4 million for the thirty-year life of the project.

Date: July 15, 2008

Respectfully submitted,

  
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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 4/21/2008)

**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, **Chester Hong**, declare that on **July 15, 2008**, I deposited copies of the attached **Staff Comments on PMPD**, 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.

  
CHESTER HONG