

**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 MOTION TO REOPEN THE EVIDENTIARY
RECORD**

DOCKET	
06-AFC-6	
DATE	JUL 16 2008
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JULY 16, 2008

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THE EVIDENTIARY RECORD**

July 8, 2008

Eastshore Energy Center ("Eastshore") hereby petitions the Committee to reopen the evidentiary record on traffic and transportation to allow Eastshore to submit supplemental evidence including an additional flyover test of a facility similar to Eastshore. With this second flyover test, Eastshore intends to address and rectify the following deficiencies enumerated by the Committee in the Presiding Member's Proposed Decision ("PMPD").

Eastshore proposes to prepare a protocol to submit to all other parties for comment, conduct the second flyover test, and submit the results of the second flyover test to the Committee for its consideration.

Eastshore requests until the end of September 2008 to present the additional evidence in order to allow for proper preparation and timing of the second flyover test.

The Second Flyover Test Will Address All of the Committee's Concerns

The Traffic and Transportation section of the PMPD discusses the Committee's decision to deny certification of Eastshore based on a perceived hazard to aviation safety. In reaching its decision, the Committee calls into question the results of Eastshore's first helicopter flyover test. That initial flyover test was conducted on November 28, 2007 over the Barrick plant near Reno, Nevada. The Barrick facility is comparable to Eastshore, with the primary difference being that the Barrick stacks are arranged in groups of threes and fours, instead of individual stacks arranged linearly like Eastshore.

Eastshore proposes to conduct the second flyover test this summer at either the Plains End plant in Arvada, Colorado or the Barrick facility. The Plains End plant has the same number

of identical model engines, as well as exactly the same stack configuration as that proposed by Eastshore. Eastshore believes this second flyover test will address each of the Committee's following concerns.

First, the Committee notes that not all engines at the Barrick plant were operating during the first flyover test. Eastshore will correct this discrepancy by assuring that all engines are operating during the second flyover test.

Second, both Staff and the Committee took issue with the fact that cold conditions during the Barrick flyover test resulted in reduced radiator fan use and thus reduced plume emissions from the radiator. Since the proposed second flyover will occur during the summer, cold conditions will not be a factor and therefore, the radiator fans will be at or near full use.

Third, the Committee asserts that worst-case conditions were not present during the Barrick flyover test because the presence of winds diminished the ability of plumes to rise in the air. Eastshore plans to conduct the second flyover test on a day with little to no wind interference.

Fourth, the Committee remarks in the PMPD that a hand-held anemometer was used to measure ground-level wind speed but not wind speed at flyover altitudes. Eastshore will remedy this difference by measuring wind speed both at ground level and at flyover altitudes with calibrated scientific quality instruments to ensure that an acceptable measurement is taken.

Fifth, the Committee notes the different configuration of the engines and stacks at the Barrick site as a potential misrepresentation of the Eastshore site characteristics. If possible, the second test will occur over the Plains End facility because its engine and stack configuration is in a line exactly as it is at Eastshore, rather than in groups.

Sixth, the Committee faults Eastshore for failing to measure the plume width at the Barrick plant. Eastshore will address this concern at the second flyover test by measuring the plume width.

Seventh, the Committee finds the use of a helicopter rather than a fixed-wing aircraft to be unrepresentative of the typical air traffic over the Eastshore site. It is not legal to fly a fixed-wing aircraft at less than 500 feet over either facility without prior Federal Aviation Administration ("FAA") approval. Eastshore will seek the necessary FAA approval to use a fixed-wing aircraft for the second flyover test.

Lastly, the Committee asserts that the different geography and higher altitude of the Barrick plant, compared to the Eastshore site, somehow prevented the initial flyover test results from providing an accurate representation of the plumes at Eastshore. The Plains End facility, at approximately 5,344 feet MSL, sits at an even higher elevation than the Barrick plant. However, the higher altitude actually results in stronger plume velocity due to less resistance, and will therefore present more conservative results than would occur at the Eastshore site.

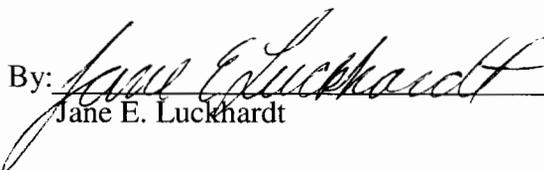
Eastshore is concerned that Staff and the Committee relied only upon the Katestone Environmental modeling from the Russell City Energy Center proceeding for its analysis. Eastshore points out that Staff only conducted a screening-level analysis for the Eastshore project where a full protocol analysis was necessary, requiring detailed modeling once the threshold conditions were met. Furthermore, Eastshore notes that modeling is only an approximation of the impact, where the results are only as good as the inputs and assumptions of the model. Contrary to the assertions in the PMPD, Eastshore strongly disagrees with the modeling conducted by Staff and remains concerned that Staff did not go beyond that initial analysis to collect factual data. Eastshore proposes to supply the Committee with the necessary factual, and empirical data derived at least a second flyover test.

Conclusion

Eastshore is surprised that the data from its initial flyover test at the Barrick plant was dismissed so abruptly. However, Eastshore petitions the Committee to reopen the evidentiary record in order to submit the results of a second flyover test. With input from the other parties, Staff, and the Committee, Eastshore believes that the second flyover test will effectively address the above-mentioned deficiencies described by the Committee in the PMPD.

DATED: July 16, 2008

DOWNEY BRAND LLP

By: 
Jane E. Luckhardt

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PROOF OF SERVICE
(Revised 4/21/08)

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, Lois Navarrot, declare that on July 15, 2008, I deposited copies of the attached **EASTSHORE ENERGY CENTER'S MOTION TO REOPEN THE EVIDENTIARY RECORD** 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