

STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: ) Docket: 06-AFC-6  
)  
Application for Certification for the )  
Eastshore Energy Center in Hayward ) July 28, 2008  
By Tierra Energy )  
\_\_\_\_\_ )

STAFF RESPONSE TO APPLICANT'S  
MOTION TO REOPEN THE RECORD

<b>DOCKET</b> <b>06-AFC-6</b>	
<b>DATE</b>	JUL 28 2008
<b>RECD.</b>	JUL 28 2008

At the Hearing and Conference held on July 21<sup>st</sup>, 2008 for this proceeding, the Committee assigned to the Eastshore Energy Center Application for Certification heard oral arguments regarding the applicant's Motion to Reopen the Evidentiary Record, filed July 16, 2008. In its Motion, the applicant states that it plans to conduct additional overflight tests to address the Committee's concerns about the previous overflight test and demonstrate that the thermal plumes from the Eastshore Energy Center would not create an aviation safety issue. At the Hearing, staff stated its opposition to the motion to reopen the record. Staff indicated that even if such a test alleviated concerns about the hazards created by the project's thermal plumes, the revised PMPD would still need to address whether or not an override is appropriate, due to the fact that the PMPD included a finding that the project is not consistent with the City's general plan policies for reasons that are unrelated to the issue of aviation safety. Although staff disagrees with the PMPD's conclusions on that point, the fact that the Committee has reached this conclusion means that the need for an override could not be obviated by the proposed tests.

In addition, staff stated that the applicant's proposed test would not alleviate legitimate concerns about the project's impacts on aviation safety unless the test were conducted in such a manner as to also address the concerns of the state and federal agencies responsible for aviation safety. Staff agrees that empirical data could ultimately be very valuable in refining the analysis of thermal plume effects. But to be useful, that data needs to be collected as part of a protocol whose design is carefully considered and coordinated in conjunction with both the Federal Aviation Administration (FAA), the Aeronautics Division of the California Department of Transportation (CalTrans

*C. Hong*

Aeronautics Division), and Energy Commission staff. The FAA and CalTrans Aeronautics Division also need to be provided with the opportunity to review the test results and determine how they affect the agencies' recommendations regarding the need for aircraft to avoid overflight of thermal plumes. The applicant stated that these tests would, in fact, be coordinated with FAA and CalTrans Aeronautics Division. Staff supports the applicant's efforts to work with the FAA and CalTrans Aeronautics Division and with Energy Commission staff to refine understanding of this issue. Therefore, if the applicant files documentation by August 15th from the FAA and CalTrans Aeronautics Division indicating their interest in such a test as a means of addressing issues associated with the Eastshore Energy Center's thermal plumes, as well as their commitment to participate in the development of the test protocol, staff will withdraw its objection to the motion. If, however, such documentation is not provided by that date, staff recommends that the Motion be denied.

Date: July 28, 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 7/18/2008)

**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 28, 2008**, I deposited copies of the attached **Staff Response To Applicant's Motion To Reopen The Record**, 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.

  
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Attached in **PDF format** is the California Energy Commission's "**Staff Response To Applicant's Motion To Reopen The Record**". Please call me if you have any problems opening the attachment (916) 654-3951.

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